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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in its resolution 66/171, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States countering terrorism to fully comply with their obligations under international law. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including in support of the implementation of the United Nations Global Counter-Terrorism Strategy, notably through the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Protecting Human Rights while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and the Office of the United Nations High Commissioner for Human Rights.

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I. Introduction

1. In its resolution 66/171 of 19 December 2011, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law. It welcomed the work of the United Nations High Commissioner for Human Rights to implement the mandate given to her in 2005, by Assembly resolution 60/158, and requested the High Commissioner to continue her efforts in that regard; took note with appreciation of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism (A/66/204); and requested the Secretary-General to submit a report on the implementation of the resolution to the Human Rights Council and to the Assembly at its sixty-eighth session.

2. In that resolution the General Assembly also encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism.

3. Through the adoption of resolution 66/282 of 29 June 2012, the General Assembly concluded its third biennial review of the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex). In its resolution 66/282 the Assembly emphasized the importance of an integrated and balanced implementation of all four pillars[1] of the Strategy. The Assembly also reasserted the fundamental role of the promotion and protection of human rights and fundamental freedoms, as reflected in pillar IV, in the implementation of all pillars of the Strategy. Through a statement by its President on 15 January 2013 (S/PRST/2013/1), the Security Council also reaffirmed that counter-terrorism measures taken by States must comply with all their obligations under international law, including human rights law, and underscored that "effective counter-terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort.

4. The present report responds to the request of the General Assembly in its resolution 66/171, as well as to the request of the former Commission on Human Rights, for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including in support of the implementation of the United Nations

[1] Pillar I, "Measures to address the conditions conducive to the spread of terrorism"; Pillar II, "Measures to prevent and combat terrorism"; Pillar III, "Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard"; and Pillar IV, "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism".

Global Counter-Terrorism Strategy. This includes the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Protecting Human Rights while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and OHCHR.

II. Recent United Nations developments in the in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

5. The Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, led by OHCHR,[2] continues to assist States in implementing the human rights aspects of the United Nations Global Counter-Terrorism Strategy, in particular those contained in pillar IV, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism". An overview of the activities of the Counter-Terrorism Implementation Task Force and its Working Groups is contained in the report of the Secretary-General on the activities of the United Nations system in implementing the Strategy (A/66/762).

6. As Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, OHCHR has continued to promote respect for and compliance with human rights and the rule of law as part of effective counter-terrorism strategies; support the exchange of best practices to promote and protect human rights, fundamental freedoms and the rule of law in all aspects of counter-terrorism;[3] and assist States in the implementation of the human rights aspects of the United Nations Global Counter-Terrorism Strategy,[4] in particular those reflected in pillar IV. In line with the emphasis of Member States on the importance of an integrated and balanced implementation of all pillars of the Strategy,[5] OHCHR has increasingly highlighted the preventive aspects of counter-terrorism measures that are in compliance with human rights and the rule of law, as well as the linkages between "measures to address the conditions conducive to the spread of terrorism", as reflected in pillar I of the Strategy, and "measures to

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[2] Other members include the Counter-Terrorism Committee Executive Directorate, the International Maritime Organization, the International Criminal Police Organization (INTERPOL), the Analytical Support and Sanctions Implementation Monitoring Team concerning Al-Qaida and the Taliban and associated individuals and entities, the Office of Legal Affairs, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Interregional Crime and Justice Research Institute and the United Nations Office on Drugs and Crime. The International Committee of the Red Cross, the United Nations Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees participate as observers.

[3] See General Assembly resolution 66/171, para. 13.

[4] See General Assembly resolution 60/288, annex.

[5] General Assembly resolution 66/282, paras. 2 and 6.

ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism" as reflected in pillar IV.[5]

7. Under the leadership of OHCHR, the Working Group has been implementing a major long-term project with global reach on training and capacity-building for law enforcement officials on human rights, the rule of law and prevention of terrorism, with the support of Denmark, Switzerland and the United States of America. The objective of the project is to provide training and technical assistance to States in order to enhance their knowledge, understanding and implementation of the international human rights framework and the rule of law in the counter-terrorism field. The project will improve States' capacity to prevent, respond to and investigate terrorism threats and support their efforts to implement measures included in pillar IV of the Strategy. The project, by offering participating States access to human rights training, information and expertise on emerging best counter-terrorism practices, is aimed at encouraging operational police and security officials to embed respect for international human rights norms and rule of law standards in their counter-terrorism programming and to increase cross-border and regional cooperation in this field.

8. The project was launched in April 2013 at a workshop in Amman, the purpose of which was to begin mapping the training needs of States, to raise awareness of the project among experts and State representatives and to establish a roster of experts that could assist in developing the training curricula for the project. Participants included senior police and security officials and other high-level representatives from Burkina Faso, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mali, Nigeria, Qatar, Tunisia, the United Arab Emirates and Yemen. Belgium, Brazil, Canada, Denmark, France, the Netherlands, the Russian Federation, Spain, and the United States of America, as well as the European External Action Service, participated as observers. Participants also included international human rights law experts, investigators, trial attorneys counter-terrorism officials and experts, civil society representatives, academics, members of the Counter-Terrorism Implementation Task Force and experts from other international organizations.

9. The workshop focused on mapping current training needs. There were substantive sessions on international human rights law and current best-practice standards in the areas of investigative interviewing, the use of special investigation techniques, countering violent extremism, detention regimes and community policing. As a result of the workshop, several Member States, including Burkina Faso, Egypt, Mali, Nigeria, Tunisia and Yemen, expressed interest in requesting training under the project after the second key needs-assessment and training best-practices workshop has taken place, the training modules have been developed and the roster of experts has been established. Those experts will provide technical assistance and follow a training-the-trainers approach to ensure the sustainability and long-term impact of the project.

10. In connection with that project, the Working Group on Protecting Human Rights while Countering Terrorism was represented at a number of events, including a seminar on the topic "Bringing terrorists to justice: policy challenges in the prosecution and prevention of terrorism", organized by the Counter-Terrorism Committee Executive Directorate and held in Dar es Salaam, United Republic of Tanzania, from 26 to 28 February 2013; a peer-review meeting on community policing organized by the Organization for Security and Co-operation in Europe

(OSCE) and held in Warsaw on 6 and 7 March 2013; a workshop on community policing organized by the Global Counter-Terrorism Forum (GCTF) and held in Washington, D.C., on 21 and 22 March 2013; and a seminar on the topic "Proactive investigative counter-terrorism good practice in the criminal justice sector", organized by GCTF and held in Abuja on 5 and 6 June 2013.

11. The Working Group has also expanded its series of basic human rights reference guides with funding support from the United Nations Counter-Terrorism Centre.[6] Those guides are practical tools that serve as a reference to guide national action, provide checklists for national assessment processes and address capacity-building needs of States. As part of the project, the existing guides on stopping and searching of persons[7] and on security infrastructure[8] will be updated, translated and published, while further guides on detention, the proscription of organizations and the conformity of national counter-terrorism legislation with international human rights law will be developed. Building on the outcomes of the series of regional expert workshops held in 2011 and 2012 on the right to a fair trial and due process in the context of countering terrorism, the Working Group will also develop a human rights reference guide on this issue.

12. As Chair of the Working Group, OHCHR has deepened its engagement with civil society organizations and human rights defenders during the reporting period on issues related to the implementation of the human rights aspects of the Strategy, as reflected in pillars I and IV. Civil society, through initiatives at the national and international levels, is crucial to effective and sustainable counter-terrorism activities and strategies that are in compliance with human rights and the rule of law.

13. Within the framework of the Counter-Terrorism Implementation Task Force, OHCHR has continued to highlight human rights concerns and endeavoured for human rights and the principle of the rule of law to be mainstreamed through the work of the Task Force and across the activities of its working groups,[9] in line with the Strategy and General Assembly resolution 66/171. OHCHR contributed to the United Nations Counter-Terrorism Centre conference on national and regional counter-terrorism strategies in Bogota, held under the auspices of the newly established Working Group on National and Regional Counter-Terrorism Strategies on 31 January and 1 February 2013, highlighting the importance of human rights as the fundamental basis of effective national and regional counter-terrorism strategies. OHCHR contributed to the Counter-Terrorism Implementation Task Force/European Union dialogue that took place on 21 November 2012 in New York. The Assistant Secretary-General for Human Rights participated in the Counter-Terrorism Implementation Task Force coordination meeting in New York on 16 and 17 December 2012. On 8 May 2013, OHCHR participated in a meeting in New York on the practical correctional rehabilitation programme and the role of the Mohammed Bin Naif Counselling and Care Centre in Saudi Arabia in countering terrorism. On 13 June 2013, the High Commissioner delivered opening remarks at

[6] See also A/HRC/22/26, para. 12.

[7] Available from http://www.un.org/en/terrorism/ctitf/pdfs/bhrrg_stopping_searching.pdf.

[8] Available from http://www.un.org/en/terrorism/ctitf/pdfs/bhrrg_security_infrastructure.pdf.

[9] The Working Group on Supporting and Highlighting Victims of Terrorism, the Working Group on Border Management relating to Counter-Terrorism, the Working Group on Dialogue, Understanding and Countering the Appeal of Terrorism and the Working Group on National and Regional Counter-Terrorism Strategies.

the International Counter-Terrorism Focal Points Conference on Addressing Conditions Conducive to the Spread of Terrorism and Promoting Regional Cooperation, held in Geneva, organized by the Counter-Terrorism Implementation Task Force Office in partnership with the Government of Switzerland. OHCHR also contributed to a panel discussion at the conference on the role of civil society, underscoring the crucial role of civil society for effective, sustainable and human rights-compliant counter-terrorism strategies and measures.

B. Counter-Terrorism Committee Executive Directorate

14. The Counter-Terrorism Committee Executive Directorate has continued to participate actively in the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, including at the workshop organized by the Working Group to launch a capacity-building project for law enforcement officials, held in Amman in April 2013. In line with resolution 66/171, the Executive Directorate has also continued to liaise and strengthen cooperation with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and other human rights mechanisms and mandates, including in relation to preparation and follow-up of country visits and to the facilitation of technical assistance. The Executive Directorate continued its dialogue on relevant human rights issues with regional and subregional organizations, as well as with national and international civil society organizations. It also established an internal task force related to comprehensive and integrated national counter-terrorism strategies and has paid increased attention to addressing the conditions conducive to terrorism, all of which have important human rights dimensions. In its revised process for assessing the implementation of Security Council resolutions 1373 (2001) and 1624 (2005), the Executive Directorate has included an expanded number of human rights issues to be discussed with Member States.

15. From 18 to 20 March 2013, the Executive Directorate convened a workshop in Kathmandu for South Asian police officers, prosecutors and judges with expert-level participation from OHCHR. The workshop focused on issues related to witness protection, media and the prosecution of terrorism cases, and to enhancing the capacity of the judiciary to adjudicate terrorism cases. Similarly, OHCHR human rights experts participated in a workshop for East African law enforcement officers and prosecutors hosted by the Executive Directorate in Kampala from 7 to 9 May 2013. OHCHR contributed to two workshops on countering incitement to terrorism and enhancing cultural dialogue, pursuant to Security Council resolution 1624 (2005). The first workshop, co-organized by the Organization of Islamic Cooperation and the Executive Directorate, was held in Jeddah, Saudi Arabia, from 28 to 30 May 2013, while the second workshop, organized by the Executive Directorate, brought representatives from North African States together in Algiers from 16 to 18 June 2013. The workshops provided an opportunity for participants from various backgrounds to share experiences relating to current and potential challenges that might hamper or undermine efforts to counter incitement to terrorism and violent extremism at the national and regional levels.

C. Human Rights Council

16. In its resolution 19/19, the Human Rights Council once again called on all States to ensure that any measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law. The Council called on States, inter alia, to safeguard the right to privacy in accordance with international law and urged them to take measures to ensure that interferences with the right to privacy are regulated by law, subject to effective oversight and appropriate redress, including through judicial review or other means. It also called upon States, while countering terrorism, to ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims receive adequate, effective and prompt reparations where appropriate, including by bringing to justice those responsible for such violations. The Council encouraged the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism.

17. In its resolution 22/6, the Human Rights Council expressed its grave concern that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, had been misused to target human rights defenders or had hindered their work and endangered their safety in a manner contrary to international law. In paragraph 10 of that resolution, the Council called on States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights; clearly identify which offences qualify as terrorist acts by defining transparent and foreseeable criteria; "prohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention"; and allow appropriate access for relevant international bodies, non-governmental organizations and national human rights institutions, where such exist, to persons detained under anti-terrorism and other legislation relating to national security, and to ensure that human rights defenders are not harassed or prosecuted for providing legal assistance to persons detained and charged under legislation relating to national security.

1. Universal periodic review

18. The Human Rights Council also addressed questions related to human rights and counter-terrorism in its recommendations to States under universal periodic review. Its recommendations cited the need to ensure that all legislation, policies and measures for countering terrorism comply with States' international obligations related to international human rights law, international humanitarian law and refugee law. The importance of transparent, independent and comprehensive investigations by some States into their alleged complicity in secret detention practices and illegal renditions in the counter-terrorism context was underscored.[10] The need to ensure that detainees are held only in recognized places of detention, with regularized procedures and safeguards to protect the rights of detainees,

[10] See A/HRC/21/4, A/HRC/21/9 and A/HRC/23/5.

including access to legal representation and systematic family notification, was also highlighted.[11] Other issues of concern included the need to review legislation and policies to ensure that the legitimate activities of civil society would not be restricted as a result of counter-terrorism legislation.[12] Recommendations also referred to the importance of preventing religious profiling, as well as the need to review terrorism-related legislation and measures to ensure the effectiveness in practice of safeguards against abuse and against the deliberate targeting of certain ethnic groups.[13] It was also recommended that States commit to investigating individuals suspected of involvement in terrorism-related activities and, where sufficient evidence exists, to their prosecution in ordinary courts, in conformity with international fair trial standards.[14]

2. Special procedures

19. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has focused in his reports on issues relating to the human rights of victims of terrorism and corresponding international obligations of States to secure those rights;[15] on the Security Council's Al-Qaida sanctions regime and its compatibility with international human rights norms, in particular the due-process deficits inherent in the sanctions regime;[16] and accountability of public officials for gross or systematic human rights violations committed while countering terrorism.[17]

20. The Special Rapporteur conducted a country visit to Burkina Faso in April 2013. At the end of his visit, the Special Rapporteur noted the importance of tools to ensure the security of a State's borders, to maintain the security of inward investment essential to its development and to address the economic, social, political and human rights concerns that can easily become conditions conducive to the spread of terrorism.[18]

21. With the support of the Counter-Terrorism Committee Executive Directorate, in June 2013, the mandate of the Special Rapporteur was represented at a stakeholders' coordination meeting in Ouagadougou. The meeting was co-organized by the Counter-Terrorism Implementation Task Force and the Executive Directorate and was convened in the context of the implementation of the Integrated Assistance for Countering Terrorism Initiative of the Counter-Terrorism Implementation Task Force. On the margins of the coordination meeting, the conclusions and recommendations reached by the Special Rapporteur in the context of his visit to Burkina Faso in April 2013 were shared with the local authorities and the donor community.

22. Since assuming his mandate in August 2011, the Special Rapporteur has also issued numerous communications and press releases, and has participated in

[11] See A/HRC/22/16.
[12] See A/HRC/21/4.
[13] See A/HRC/21/9.
[14] See A/HRC/21/9.
[15] See A/HRC/20/14.
[16] See A/67/396.
[17] See A/HRC/22/52.
[18] The Special Rapporteur's statement is available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13227&LangID=E.

conferences, training events and expert meetings on the promotion of human rights while countering terrorism. These have included a workshop for a high-level delegation from Iraq, in Geneva on 25 February 2013, on conflict-resolution and peacebuilding in the context of terrorist violence, and a joint hearing of the Subcommittees on Human Rights and on Security and Defence of the European Parliament on the study *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare* on 25 April 2013 in Brussels. An overview of the Special Rapporteur's activities is reflected in his reports to the Human Rights Council[19] and to the General Assembly.[20]

23. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his report to the Human Rights Council (A/HRC/19/61), noted that several national commissions of inquiry had been established to examine issues concerning State secrets and complicity in torture in the aftermath of the terrorist attacks of 11 September 2001. The Special Rapporteur observed that commissions of inquiry could constitute an important tool to investigate crimes committed in the frame of counter-terrorism operations.

24. In the course of his country visits, the Special Rapporteur has also addressed issues of torture and ill-treatment in the context of security and counter-terrorism measures. In the case of Tunisia, for example, he observed that the use of torture had intensified after the entry into force of the counter-terrorism legislation adopted on 10 December 2003.[21] He noted in that regard the ratification of several international human rights instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Ministry of Justice's initiative to develop a draft legal framework for the harmonization of national legislation with international human rights standards, as a manifestation of good will and the commitment to reform the legal system of Tunisia. In Tajikistan, he observed that migrant workers returning from the Russian Federation, members of Islamic movements and Islamist groups or parties, and persons accused of being linked to Islamist extremists could be at particular risk of torture and ill-treatment by the Sixth Department of the State Committee for National Security under the pretext of the fight against terrorism and threats to national security.[22] In Morocco, the Special Rapporteur observed a systematic pattern of acts of torture and ill-treatment during the detention and arrest process in cases involving allegations of terrorism or threats against national security.[23]

25. The Special Rapporteur has issued numerous communications and press releases in advocating for authorities to amend their national counter-terrorism legislation and fully implement all necessary safeguards to prevent torture and ill-treatment in cases related to counter-terrorism, including the exclusion of evidence obtained under torture. On 12 April 2012, the Special Rapporteur delivered a statement to a public hearing convened by the Subcommittee on Human Rights of the European Parliament in Brussels on the topic "Secret rendition and detention practices: how to protect human rights while countering terrorism".

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[19] A/HRC/20/14, paras. 2-9 and A/HRC/22/53, paras. 2-13.

[20] A/67/396, paras. 2-11.

[21] See A/HRC/19/61/Add.1.

[22] See A/HRC/22/53/Add.1.

[23] See A/HRC/22/53/Add.2.

26. In its resolution 20/16, the Human Rights Council requested the Working Group on Arbitrary Detention to prepare draft basic principles and guidelines, for presentation to the Council in 2015, on remedies and procedures on the right of anyone deprived of his or her liberty, with the aim of assisting Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty in compliance with international human rights law.

27. At its sixty-fifth session, the Working Group on Arbitrary Detention adopted its deliberation No. 9, concerning the definition and scope of arbitrary deprivation of liberty under customary international law. The Working Group found that the prohibition of all forms of arbitrary deprivation of liberty formed a part of international customary law and constituted a pre-emptory or jus cogens norm, and expressed concern at the increased reliance on administrative detention, including detention on counter-terrorism grounds. The Working Group noted, "although it is acknowledged that counter-terrorism measures might require the adoption of specific measures limiting certain guarantees, including those relating to detention and the right to a fair trial in a very limited manner, deprivation of liberty must in all circumstances remain consistent with the norms of international law. In this respect, the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention is a personal right, which must in all circumstances be guaranteed by the jurisdiction of the ordinary courts." It noted further, "counter-terrorism legislation that permits administrative detention often allows secret evidence as the basis for indefinite detention. As this would be inconsistent with the prohibition of arbitrary deprivation of liberty, no person should be deprived of liberty or kept in detention on the sole basis of evidence to which the detainee does not have the ability to respond, including in cases of immigration, terrorism-related and other subcategories of administrative detention."[24] The Working Group has also adopted a number of opinions under its individual complaints procedure that directly concerned cases of persons detained on terrorism-related charges, in which the deprivation of liberty was considered to be arbitrary.[25]

28. In the report on its mission to Pakistan, the Working Group on Enforced and Involuntary Disappearances stated its opinion that the compatibility of the Anti-Terrorism Act and of the AACP [actions in aid of civil power] Regulations with international standards should be carefully examined, given that they would appear to allow forms of arbitrary deprivation of liberty, which may create themselves the conditions for the occurrence of enforced disappearances."[26] The Working Group further acknowledged the important security challenges Pakistan is facing, including attacks by terrorist movements and violent groups. It emphasized, nonetheless, that "actions taken to deal with security threats, and in particular with terrorism, must at all times respect nationally and internationally recognized human rights."[27] The Working Group also recalled that article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance stated that "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances."

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[24] A/HRC/22/44, paras. 37-75.

[25] See the database on case opinions and reports produced by the Working Group, available from http://www.unwgaddatabase.org/un/.

[26] A/HRC/22/45/Add.2, para. 29.

[27] Ibid., para. 90.

29. On 21 October 2011, the mandates involved in the joint study on global practices in relation to secret detention in the context of countering terrorism, including those of the Special Rapporteur on torture, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearance, addressed follow-up letters to 59 States requesting their Governments to provide an update on the implementation of the recommendations contained in the study. In its report to the Human Rights Council (A/HRC/22/44), the Working Group on Arbitrary Detention referred to its consideration of follow-up, within its mandate, to that study. In his report to the Human Rights Council, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism endorsed and strongly urged all Member States to accept and implement the recommendation made to the Council in February 2010 by that study in the context of countering terrorism.[28]

30. In her 2012 report to the General Assembly (A/67/292), the Special Rapporteur on the situation of human rights defenders assessed the impact of certain legislation, including anti-terrorism and other legislation relating to national security, on the activities of human rights defenders. The Special Rapporteur noted that in some instances the provisions outlined in anti-terrorism legislation were so broad that any peaceful act expressing views of dissent would fall under the definition of a terrorist act, or an act facilitating, supporting or promoting terrorism. She also emphasized limitations on access to legal representation for individuals prosecuted under anti-terrorism legislation, noting that such limitations had serious implications for human rights defenders providing legal assistance and working to monitor prisons and detention facilities.

31. In his report to the twenty-third session of the Human Rights Council (A/HRC/23/39), the Special Rapporteur on the rights to freedom of peaceful assembly and of association addressed concerns related to laws and practices that constrain civil society organizations from seeking, receiving or utilizing foreign funding. The Special Rapporteur noted that States had an interest in protecting national security or public safety, which could be legitimate grounds for restricting freedom of association, but he underscored that States must comply fully with the provisions of international human rights law in this regard. He expressed specific concerns about Financial Action Task Force recommendation 8 on non-profit organizations, which states that "countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism". The Special Rapporteur underlined in paragraph 25 of his report that "very few, if any, instances of terrorism financing have been detected as a result of civil society organization-specific supervisory measures", and that it was rather financial intelligence that was essential. In his view, recommendation 8 did not adequately take into account the fact that States already have other means, such as financial surveillance and police cooperation, to effectively address the terrorism-financing threat. He noted that the Financial Action Task Force failed to provide for specific measures to protect the civil society sector from undue restrictions of the right to freedom of association by States asserting that their measures are in compliance with Task Force recommendation 8. The Special Rapporteur underscored the

[28] A/HRC/22/52, para. 50.

significant role of civil society organizations in combating terrorism, noting that unduly restrictive measures, which could lead donors to withdraw support from associations operating in difficult environments, could undermine invaluable initiatives of civil society organizations in the struggle against terrorism and extremism.

32. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly (A/67/275), addressed issues relating to restrictions on the imposition of capital punishment, in particular those issues of direct relevance to arbitrary deprivation of life, the violation of the right to a fair trial, the problem of error and the imposition of the death penalty by military courts and tribunals. The Special Rapporteur noted with concern that a few States had continued to broaden the range of offences punishable by death, including for terrorism-related offences. For instance, in 2011, a new penal law for terrorism crimes and financing of terrorism was presented for consideration in Saudi Arabia, containing 27 offences punishable by death, while in Bangladesh, a bill to amend the Anti-Terrorism Act of 2009 was adopted by the parliament in February 2012, introducing the death penalty for financing of terrorism and other offences. The Special Rapporteur has also issued a number of communications relating to questions of imposition of death penalty in counter-terrorism cases, with particular concern over the imposition of the death penalty in counter-terrorism cases in Iran (Islamic Republic of) and Iraq, in contravention of international human rights law.[29]

33. In his report on steps taken by the United States Government to implement the recommendations made by the previous mandate holder following his visit to the United States in June 2008 (A/HRC/20/22/Add.3), while noting progress in some areas, the Special Rapporteur noted that no significant improvement had been made in priority areas of concern, notably due process in the imposition of the death penalty; transparency in law enforcement, military and intelligence operations; and accountability for potentially unlawful deaths in the Government's international operations. The Special Rapporteur noted that inmates sentenced to death were still not entitled to lawyers for the critical stage of the State h beas procedure, when all claims must be raised or they will be defaulted in the Federal habeas procedure under the Antiterrorism and Death Penalty Act of 1996.

34. The Special Rapporteur also conducted a visit to India in March 2012, during which he addressed issues related to deaths resulting from the excessive use of force by security officers and relevant legislation in this regard, as well as the unlawful killings committed by various non-State actors, noting that impunity in cases of extrajudicial executions was a crucial challenge that needed to be addressed. He recommended that the practice of inviting visits by United Nations special procedures should continue, including in relation to counter-terrorism measures. In the report on his visit to Turkey (A/HRC/23/47/Add.2) in November 2012, the Special Rapporteur noted that any analysis of the human rights record of Turkey should take into account the country's challenges in fighting terrorism. However, he observed that the fight against terrorism in Turkey presented significant challenges in terms of compliance with international human rights standards and noted in particular that the legal framework for counter-terrorism operations contained serious ambiguities.

[29] See A/HRC/23/47/Add.5.

D. Human rights treaty bodies

35. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination continued to address the compliance of the counter-terrorism measures of States parties with obligations under the international human rights treaties.

36. One concern addressed by the Human Rights Committee, for example, has been the incompatibility of the national anti-terrorism legislation of some States parties with specific provisions of the International Covenant on Civil and Political Rights, in particular owing to vague and overly broad definitions of terrorism. Other issues of concern have included lack of safeguards related to due process and fair trial, including arbitrary arrest and indefinite detention without charge or trial; widespread use of lengthy pretrial detention, a lack of effective safeguards to challenge the lawfulness of pretrial detention and a lack of prompt access to a lawyer for detainees; restrictions on freedom of expression and opinion, particularly for human rights defenders, lawyers and journalists; and the targeting by law enforcement officials of vulnerable groups, in the context of counter-terrorism activities. The Committee has also expressed concerns related to the practice of requesting diplomatic assurances in cases of extradition that may expose individuals to the risk of torture or cruel, inhuman and degrading treatment or punishment in the requesting State. In such cases, the Committee has noted that the State party should recognize that the more systematic the practice of torture, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be.[30]

37. The Human Rights Committee has continued to provide guidance through the development of relevant general comments, including its general comment No. 34 on article 19 of the International Covenant on Civil and Political Rights. With regard to counter-terrorism measures, the Committee has specified that States parties should ensure that these are compatible with article 19, paragraph 3, and that offences such as "encouragement of terrorism" and "extremist activity", as well as offences of "praising", "glorifying" or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.[31] Excessive restrictions on access to information must also be avoided. The media play a crucial role in informing the public about acts of terrorism, and their capacity to operate should not be unduly restricted. In this regard, the Committee has noted that journalists should not be penalized for carrying out their legitimate activities.

38. The Committee against Torture has expressed concerns related to broad and vague definitions of terrorism in national legislation, as well as provisions for lengthy pretrial detention, a lack of provision to allow individuals to challenge the legality of their detention and a lack of adequate safeguards against the arbitrary arrest and detention of individuals accused of terrorist crimes. The Committee has expressed concerns over the use of special advocates; the use of administrative detention and immigration legislation to detain and remove non-citizens on the grounds of national security; the use of secret detention in the context of counter-

[30] CCPR/C/DEU/CO/6, para. 12.

[31] CCPR/C/GC/34, para. 46.

terrorism cooperation; the lack of effective, impartial and independent investigations into complicity in extraordinary renditions; and the lack of safeguards against the use of evidence obtained through torture.

39. The Committee on the Rights of the Child has addressed issues related to the impact of counter-terrorism legislation on children, including a lack of legal safeguards for children detained and charged under such legislation. The Committee on the Elimination of Racial Discrimination has raised concerns over the impact of counter-terrorism and other security legislation on certain groups, and has recommended that systems of terrorism prevention and investigation include safeguards against abuse and the deliberate targeting of certain ethnic and religious groups.[32]

III. Activities of the United Nations High Commissioner for Human Rights and her Office

40. In complement to the role of OHCHR as Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, that Office has continued to address priority issues related to the protection of human rights and fundamental freedoms while countering terrorism and to make recommendations in this regard. For example, in her report to the Human Rights Council at its twenty-second session, the High Commissioner addressed in detail some of the challenges to due process and the right to a fair trial in the counter-terrorism context, noting certain good-practice recommendations highlighted during the series of expert regional symposiums organized by OHCHR as Chair of the Working Group, in collaboration with the Counter-Terrorism Implementation Task Force Office.

41. In her opening statement to the Human Rights Council at its twenty-third session, on 27 May 2013,[33] the High Commissioner underscored that the objective of the global struggle against terrorism was the defence of the rule of law and a society characterized by the values of freedom, equality, dignity and justice. She noted, however, that her Office had continued to receive allegations of grave violations of human rights that had taken place in the context of counter-terrorist and counter-insurgency operations. She drew attention to the failure to close the Guantanamo Bay detention centre as an example of the struggle against terrorism failing to uphold human rights, among them the right to a fair trial, and that the continuing indefinite detention of many of the detainees at Guantanamo amounted to arbitrary detention, in breach of international law. She encouraged relevant authorities to take steps towards the closure of the Guantanamo Bay detention centre and to ensure that all such measures were carried out in compliance with their obligations under international human rights law. In the meantime, every effort must be made to ensure full respect for the human rights of detainees, including those who choose to go on hunger strike.

42. The High Commissioner has also raised concerns over the continuing failure of many States to undertake public and independent investigations of past

[32] See CERD/C/GBR/CO/18-20.

[33] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13358&LangID=E.

involvement in renditions, in which terrorist suspects were captured and delivered to interrogation centres without regard for due process. She noted that the European Parliament had denounced obstacles that had been encountered by a number of parliamentary and judicial inquiries relating to this topic, and called on States to undertake credible and independent investigations as a priority first step towards accountability.

43. The High Commissioner has repeated her concerns, including in her statement to the Human Rights Council at its twenty-third session, over the human rights implications of the use of armed drones in the context of counter-terrorism and military operations, noting that the lack of transparency regarding such use had also contributed to a lack of clarity on the legal bases for drone strikes, as well as on safeguards to ensure compliance with the applicable international law. Moreover, the absence of transparency had created an accountability vacuum in which victims were unable to seek redress. The High Commissioner urged all States to be completely transparent regarding criteria for deploying drone strikes and to ensure that their use complies fully with relevant international law. Where violations occur, States should conduct independent, impartial, prompt and effective investigations, and provide victims with an effective remedy.

44. On 13 June 2013, the High Commissioner delivered opening remarks at the International Counter-Terrorism Focal Points Conference on Addressing Conditions Conducive to the Spread of Terrorism and Promoting Regional Cooperation, in Geneva, which was organized by the Counter-Terrorism Implementation Task Force Office in partnership with the Government of Switzerland.[34] In her statement, the High Commissioner underscored the need for a deeper appreciation of the linkages between a lack of respect for human rights and the conditions conducive to terrorism, alongside efforts to ensure effective human rights-compliant criminal justice responses to terrorism. She called for a redoubling of efforts to implement the Global Counter-Terrorism Strategy and encouraged States, as part of a holistic and effective counter-terrorism strategy, to include the ratification and implementation of all international human rights treaties. The High Commissioner highlighted the critical role of civil society in countering extremism, promoting dialogue, defending human rights and enhancing social cohesion. She encouraged States to create an enabling environment, including through the adoption of legislation protecting the space afforded to civil society organizations, and to enhance their engagement in the development and implementation of national and regional counter-terrorism strategies. With regard to the human rights of victims of terrorism, the High Commissioner underscored the importance of an acknowledgement of their losses and recognition, in practice, of their rights to reparation, truth and justice, and their right to live free of fear and with the support they require.

45. OHCHR has also continued to support initiatives towards the increased coherence of the Security Council sanctions regime with international human rights standards. The New York Office of the High Commissioner for Human Rights, in partnership with the Permanent Mission of Germany to the United Nations, organized a side event on 4 December 2012 on the topic "Targeted sanctions, human rights and due process: the future of the 1267/1989 Al-Qaida sanctions regime", in which the Chair and the Ombudsperson of the Security Council Committee pursuant

[34] Available from www.un.org/en/terrorism/ctitf/conference-geneva-june-2013.shtml.

to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[35] and two civil society representatives participated as panellists and the Assistant Secretary-General for Human Rights as moderator. The event was held with a view to informing the discussions around the due process-related aspects of the Security Council sanctions regime, as reflected in its resolutions 1989 (2011) and 2083 (2012). On 19 February 2013, OHCHR senior management met with the Ombudsperson of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities in Geneva to discuss human rights issues of relevance to her mandate.

46. At the invitation of the Government of Tunisia, OHCHR participated in a seminar in Tunis on 30 and 31 May 2013, the purpose of which was to discuss a new draft anti-terrorism law for the country. That initiative reflected the commitment of the Government to ensuring that its counter-terrorism legislation is aligned with international human rights laws and standards, taking into account the recommendations issued by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.[36] OHCHR contributed human rights expertise and training to a national workshop on the topic "Human rights, fundamental freedoms and preventive criminal offences (recruitment for, training for, incitement to and glorification of terrorist acts)", organized by the United Nations Office on Drugs and Crime (UNODC) and held in Yemen from 9 to 12 June 2013, and to the development of a UNODC training module on human rights and criminal justice responses to terrorism.

47. At the invitation of OSCE, OHCHR contributed to a conference on strengthening regional cooperation, criminal justice institutions and rule of law capacities to prevent and combat terrorism and radicalization that leads to terrorism, held in Vienna on 12 and 13 November 2012. The aim of the conference was to encourage efforts and increase awareness and international capacity to uphold the rule of law, while protecting and promoting human rights within a counter-terrorism context, by instituting adequate criminal offences, criminal procedure tools and law enforcement capacities. OHCHR also took part in a peer review exercise on a draft OSCE guidebook on a community policing approach to preventing terrorism and countering violent extremism and radicalization that lead to terrorism.

48. OHCHR also continued to contribute to initiatives of GCTF, including by providing substantive and practical guidance for the drafting of good-practices memorandums.[37] For example, OHCHR participated in the third Coordinating Committee and Ministerial Plenary meeting of GCTF, in Abu Dhabi from 12 to 14 December 2012; meetings on supporting curriculum development for the International Institute of Justice and the Rule of Law, in Brussels on 10 and 11 April 2013[38] and in Geneva on 8 and 9 July 2013;[39] and a briefing to Member States by GCTF on its activities, in New York on 20 June 2013.

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[35] The report of the Special Rapporteur to the General Assembly (A/67/396) addresses this issue.

[36] See A/HRC/16/51/Add.2 and A/HRC/20/14/Add.1.

[37] See A/HRC/22/26.

[38] The meeting in Brussels was co-convened by the Center on Global Counterterrorism Cooperation, the Institute for Security Studies and the International Centre for Counter-Terrorism in The Hague.

IV. Conclusions and recommendations

49. Through the reaffirmation of the United Nations Global Counter-Terrorism Strategy, Member States have committed to an integrated and balanced implementation of all four pillars of the Strategy. In so doing, they have also reaffirmed their commitment to ensuring the promotion and protection of human rights and fundamental freedoms, as reflected in pillar IV, in the implementation of all pillars of the Strategy.

50. In this regard, Member States are encouraged to recognize the preventive aspects of counter-terrorism measures that are in compliance with human rights and rule of law, and to address the linkages between "measures to address the conditions conducive to the spread of terrorism", as reflected in pillar I of the Strategy, and "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", as reflected in pillar IV.

51. In line with their commitments under the Strategy, Member States should promote respect for and compliance with human rights and the rule of law as part of holistic and effective counter-terrorism strategies at the national and regional levels. The ratification and implementation of all international human rights treaties should form an integral part of such strategies.

52. Member States should give due attention to the recommendations on the promotion and protection of human rights in the counter-terrorism context made by the Human Rights Council under the universal periodic review process; in relevant special procedures mandates; by the United Nations human rights treaty bodies; and by the High Commissioner for Human Rights in her reports to the Human Rights Council.

53. The Counter-Terrorism Implementation Task Force and its entities, throughout their activities in support of the implementation of the Strategy, should promote respect for human rights and the rule of law as the fundamental basis of the fight against terrorism, and in particular ensure that such assistance is compliant with international human rights law.

54. Bearing in mind the critical role of civil society in countering extremism, promoting dialogue, defending human rights and enhancing social cohesion, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, should enhance their engagement with civil society and support its role in the implementation of the Strategy.

55. In their reports on progress made in the implementation of the Strategy, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, are encouraged to include information on measures they have taken to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

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[39] The meeting in Geneva was co-convened by the Center on Global Counterterrorism Cooperation and the Geneva Centre for Security Policy.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights to freedom of peaceful assembly and of association

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted in accordance with Human Rights Council resolution 21/16.

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Summary

The present report constitutes the first report to the General Assembly of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. It addresses concerns about the exercise of the rights to freedom of peaceful assembly and of association in the context of elections. The Special Rapporteur is deeply concerned about increasing human rights violations and abuses, which are being committed in several parts of the world against those who exercise or seek to exercise such rights in the context of elections and which indelibly mar such elections.

I. Introduction

1. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established by the Human Rights Council in its resolution 15/21 for an initial period of three years. The Council appointed Maina Kiai as Special Rapporteur on the rights to freedom of peaceful assembly and of association in March 2011, with a starting date of 1 May 2011. The present report is the first report submitted to the General Assembly by the Special Rapporteur, in response to the request by the Council, in its resolution 21/16, that an annual report be presented to the General Assembly. The report addresses concerns about the exercise of the rights to freedom of peaceful assembly and of association in the context of elections, and should be read in conjunction with the Special Rapporteur's thematic reports to the Human Rights Council (A/HRC/20/27 and A/HRC/23/39).

2. Every year, elections, plebiscites and referendums are conducted at various levels, including at the presidential, legislative and local levels in many countries. The high-stakes competition that characterizes most elections has seen widespread violations of human rights, including the right to life, freedom of expression, freedom of peaceful assembly and freedom of association. From the perspective of the Special Rapporteur, the rights to freedom of peaceful assembly and of association have increasingly come under attack as incumbent or incoming regimes seek to retain or gain power at all costs. The Special Rapporteur is convinced that the context of elections deserves special focus because the ability of individuals and associations to form and operate freely is particularly at risk during those periods. The Special Rapporteur is persuaded to draw this conclusion as a result of the increasing complaints he has received concerning harassment, intimidation and the undue restrictions placed on individuals, associations and their members in the run-up to or following contested elections.

3. In writing the present report, the Special Rapporteur benefited greatly from participating in a one-day expert meeting held in Geneva on 1 June 2013. The Special Rapporteur would like to thank all those who were involved in organizing the meeting, and all those who shared their experiences to inform the report, both at that meeting and in other forums.. The Special Rapporteur also took into account relevant elements of work available within the Council.[1] The country situations mentioned in the present report have been the subject of communications sent to Governments, as well as press releases and reports issued by special procedures mandate holders and high-level United Nations officials.

II. Rights to freedom of peaceful assembly and of association as integral part to free and fair elections

A. Democracy and freedom of peaceful assembly and of association

4. Democracy, as a system through which the people participate directly or indirectly in the conduct of public affairs, has broad appeal across the globe.

[1] This includes the report of the Special Rapporteur on the situation of human rights in Belarus, with a focus on human rights in the electoral processes (A/68/276).

Elections, referendums and plebiscites, in which people choose their representatives and express their choice of laws or policies, are held in the majority of countries in the world. As stipulated in article 21 (3) of the Universal Declaration of Human rights, democracy is a process in which "[t]he will of the people [is] to be the basis of the authority of government". It is commonly thought of as a process with regular periodic, free and competitive elections to decide on policies directly or indirectly through chosen representatives that must be accountable to their electorate. In other words, democracy, as reflected in the electoral process, generally involves the use of clear predictable processes with uncertain outcomes, while a non-democracy can be identified by the fact that the whole electoral process is characterized by unclear and uncertain processes but with predictable outcomes. Nevertheless, the quality of elections is increasingly coming under scrutiny in order to ensure that election outcomes are representative of the will of the people. Elections confer legitimacy on Governments; if those elections are not considered to reflect the will of the people, therefore, a sense of discontent and disenfranchisement may result and sometimes cause violent conflict. In order to sustain the democratic ideal, it is necessary for regimes to uphold the rule of law, respect and protect human rights and remain vigilant and responsive to peoples' views and opinions at all times.

5. The right to freedom of peaceful assembly and of association are pertinent to the democratic process, both during the election period and between elections. The Special Rapporteur reiterates that these rights are essential components of democracy since they empower women, men and youth to "express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable" (Council resolution 15/21, preamble).

6. More specifically, the rights to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs. The exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues. For example, such rights are essential in order to campaign and participate in public rallies, form political parties, participate in voter education activities, cast votes, observe and monitor elections and hold candidates and elected officials accountable.

7. International law contains principles and standards by which the electoral process and outcomes can be measured. Approaching assessments by recognizing that States have accepted certain legal commitments and that the elections they conduct should meet those commitments provides uniformity and objectivity to election observation. The universality, interrelatedness and interdependence of human rights are also reinforced by States having the responsibility to ensure the exercise of all rights during the electoral process in order to achieve positive outcomes. Such an approach recognizes that a successful electoral process goes beyond the events on the day that votes are cast. The legal framework, political environment and institutional capacities before, during and after polling day, have an impact on how rights are enjoyed. In addition, the Special Rapporteur believes that an electoral process, in which widespread barriers are systematically placed on the exercise of the rights to freedom of peaceful assembly and of association, cannot be said to be either free or fair and, as such, the outcome should not be considered to be the result of "genuine" elections, as required under international law.

8. The maintenance of peace during the voting process is necessary for the electorate to turn out and exercise their right to vote. Nevertheless, although important, it should not provide a justification for continuing electoral malpractices and unjustifiable restrictions on the rights to peaceful assembly and of association or other rights, for example, unlimited and uncontrolled bans on protests or demonstrations against election results. Where such rights are violated at any point during the electoral process, prompt and effective remedies should be available and accessible, presided over by impartial arbiters.

9. In the present report, the Special Rapporteur focuses on the role of associations broadly, including political parties, as central vehicles through which individuals can take part in the conduct of peaceful affairs through chosen representatives. Political parties have an essential role to play "in ensuring pluralism and the proper functioning of democracy".[2] The present report adopts the definition of a political party as "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections".[3] Of significance is the fact that a political party is an "association" (A/HRC/20/27, paras. 51-52), albeit a specialized one that may be regulated by separate legislation and that is subject to rules different from those of other associations. The Special Rapporteur considers the key difference between political parties and other associations to be the ability of political parties to present candidates for elections and to subsequently form governments, should those candidates win in genuine elections. Hence, he stresses that the engagement of civil society organizations in the electoral process should not lead to their being involuntary labelled or treated as political parties simply as a result of their having participated in public life in the way in which they have chosen.

10. The Special Rapporteur also acknowledges that, while only a segment of civil society organizations can work directly on election-related issues, such as voter education, election observation, the reform of electoral institutions and the accountability of candidates and elected officials, the election period provides a prime opportunity for a broader range of civil society organizations to engage with would-be elected representatives, highlight their concerns and interests, with a view to getting policy responses, and in general exercise their rights to participate in public affairs. For that reason, any discussion of the rights to freedom of peaceful assembly and of association in the context of elections must be inclusive of all civil society organizations, regardless of their areas of focus.

11. The term "elections" as used in the present report includes those held to choose presidential, legislative and local administrative representatives, plebiscites and referendums. The electoral period does not always fit into a neat temporal delineation. Indeed, it is arguable that the end of one election period — to the extent that this is determinable — signals the beginning of the next. Some events in the election process may be capable of a definite time allocation, for example, voter education, campaign period, voting day(s) and vote counting. However, other activities that are relevant to the process may be ongoing, continuing long after voting

[2] European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey*, Application No. 20/1997/804/1007, 25 May 1998, para. 41.

[3] Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights and the Venice Commission, *Guidelines on Political Party Regulation*, (Warsaw/Strasbourg, 2011), para. 9.

has been done, such as legislative reform and institution strengthening. By describing the scope of the present report as covering the period before, during and after elections, the Special Rapporteur seeks to convey that the context of elections is not about a specific event or a particular time period, for example, voting day — although casting one's vote is a pivotal moment in elections. The Special Rapporteur notes that elections are often highly charged contests at which much lies at stake for authorities and the electorate. In that context, States have an obligation to respect and facilitate the rights to freedom of peaceful assembly and of association throughout the entire process.

B. International legal framework related to the rights to freedom of peaceful assembly and of association in the context of elections

12. In its resolution 15/21, the Human Rights Council calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections. In addition to the notion of democracy, the rights to freedom of peaceful assembly and of association are implicit in the right to take part in the Government of one's country, as affirmed in the Universal Declaration of Human Rights, which states in article 21 (3) that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". Similarly, article 25 of the International Covenant on Civil and Political Rights affirms every citizen's right without prohibited distinctions and unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country.[4] The Human Rights Committee recognizes that the full enjoyment of those rights depends on the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, which requires the free exercise of the rights to peaceful assembly and association, among other rights (general comment No. 25, para. 25). The General Assembly, in its resolution 59/201 declared that freedom of association and peaceful assembly were essential elements of democracy, together with the right to vote and to be elected at genuine periodic free elections, and encouraged the strengthening of political party systems and civil society organizations.

13. The centrality of the rights to freedom of peaceful assembly and of association in the context of elections is affirmed in various other international and regional human rights treaties[5] and other bodies.[6] Member States of the African Union in the

[4] See also article 7 of the Convention on the Elimination of Discrimination against Women; article 29 of the Convention on the Rights of Persons with Disabilities; article 23 (1) (b) of the American Convention on Human Rights; article 13 of the African Charter on Human and Peoples' Rights; article 33 of the Arab Charter on Human Rights; and para. 25 of the Human Rights Declaration of the Association of Southeast Asian Nations.

[5] See, for example, article 7 (b) of the Convention on the Elimination of Discrimination against Women and article 29 (b) (i) of the Convention on the Rights of Persons with Disabilities.

[6] Declaration on free and fair elections, adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994).

Declaration on the Principles Governing Democratic Elections in Africa (sect. III (d)) explicitly commit themselves to safeguarding the human and civil liberties of all citizens, including the freedom of movement, assembly, association, expression, and campaigning, as well as access to the media on the part of all stakeholders, during electoral processes. The Organization for Security and Cooperation in Europe Copenhagen Document,[7] which outlines the commitment of member States in the field of elections, explicitly guarantees the rights of peaceful assembly and of association (paras. 9.2 and 9.3). Although other regional instruments on democracy do not explicitly refer to the right to freedom of association, they recognize that political parties and other forms of associations are vital components for the strengthening of democracy.[8]

14. The variety of instruments that explicitly or implicitly recognize the ability of political parties and other forms of associations to form and operate within the context of elections or, more generally, democracy, is an indicator of consensus at least at the standard-setting level around the centrality of those rights. The Special Rapporteur's experience on the implementation of those rights is less optimistic. He notes that, in the context of elections, rights are more susceptible to restriction, and therefore urges strict adherence to international human rights standards. Although freedom must be the rule and restrictions the exception (A/HRC/20/27, para. 16, A/HRC/23/39 para. 18), the Special Rapporteur deplores the fact that, in too many instances, restrictions aim to stifle critics and do not comply with international law, that is: to be prescribed by law, and to be necessary in a democratic society in the interests described in articles 21 and 22 of the International Covenant on Civil and Political Rights.[9]

15. The significance of equal protection of the rights to peaceful assembly and association in the context of elections for everyone is heightened in the context of elections because of the potential for the exacerbation of vulnerabilities during this period. The Special Rapporteur notes the inclination of actors in the electoral contest to exploit racial, ethnic, religious, political, national or social origin, among other distinctions explicitly prohibited in article 2 of the International Covenant on Civil and Political Rights, with a view to excluding opponents. He emphasizes that these rights are guaranteed for everyone on the basis of equality (A/HRC/20/27, para. 13), and that States therefore have the obligation to offer effective protection against discrimination. In the context of elections, any temporary measures designed to enhance the ability of marginalized groups or groups most at risk to exercise their rights, such as women, victims of discrimination because of their sexual orientation and gender identity, youth, persons belonging to minorities, indigenous peoples, non-nationals, including stateless persons, refugees or migrants, and members of religious groups, as well as activists advocating economic, social, and cultural rights, and used as a mechanism to level the playing field, do not constitute discrimination.

[7] Available at www.osce.org/odihr/elections/14304.

[8] African Charter on Democracy Elections and Governance, articles 3, 12; Inter-American Democratic Charter, articles 5, 27.

[9] For an analysis of permissible restrictions, see, inter alia, A/HRC/20/27, para. 15-17.

III. Freedom of peaceful assembly

16. The right to freedom of peaceful assembly, that is, to both organize and participate in indoor and outdoor peaceful assemblies, has long proven to be a key one in the context of elections. This right enables candidates to such elections to mobilize their supporters and give resonance and visibility to their political messages. Elections are also a unique opportunity for women, men and youth from all parts of society, to express their views and aspirations, either for status quo or for change, that is to say, to voice support for the Government and ruling party, or dissent. Dissent is a legitimate part of the exercise of the right to freedom of peaceful assembly, especially in the context of elections, as it is a unique opportunity for pluralist expression through peaceful means.

17. In this regard, as mentioned during the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests, the Special Rapporteur is of the opinion that participating in peaceful protests is an alternative to violence and armed force as a means of expression and change which we should support. It must thus be protected, and protected robustly (see A/HRC/19/40, para. 13). The Council shares this approach and stressed in its resolution 22/10 that peaceful protests should not be viewed as a threat, and therefore encouraged all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes. The Council further stressed that everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance. This is all the more true in the context of elections when tension is at its highest with considerable political, economic and social interests at stake.

18. However, in many countries, elections have been marred by human rights violations and abuses. For instance, in September 2009, in Guinea, some 50,000 peaceful demonstrators gathered in a stadium to protest against the possible candidacy of Capitain Moussa Dadis Camara for the presidential elections of January 2010. Security forces opened fire and used bayonets and knives to disperse the crowd. More than 150 persons were killed, and over a thousand injured. Many individuals were arrested on the scene, at their home or in hospitals. In the Islamic Republic of Iran, in June 2009, following the declaration of victory for President Ahmadinejad, security forces killed several protestors when they peacefully took to the streets to contest the election results. Security forces opened fire during the demonstrations and used batons and pepper spray to disperse the crowds. Several hundred people were arrested during the protests following the presidential elections of 2009. In the Russian Federation, peaceful protests against alleged fraudulent elections in the context of parliamentary elections held in December 2011 were met with excessive use of force, with over a thousand persons detained in various cities. Various acts of harassment, intimidation, arbitrary detention of several activists and members of the opposition also occurred in the context of the presidential protests on 6 May 2012. In the Bolivarian Republic of Venezuela, in the wake of the presidential elections of April 2013, peaceful demonstrations held in front of the offices of the national electoral commission in several states were met with brute force by security forces, along with arbitrary arrests. In Malaysia, security forces used indiscriminate force to repress a peaceful

protest organized by the Coalition for Fair and Free Elections (Bersih), which advocates for the reform of the electoral process in that country.

19. Apart from using excessive force against peaceful protesters, in some instances, States have criminalized the participation in and organization of peaceful assemblies during election time, with a view to sanctioning or deterring those willing or intending to do so. In Ethiopia, several peaceful demonstrators and human rights defenders were charged with "crimes of outrage against the constitutional order", and sentenced to life imprisonment for having participated in a demonstration against alleged fraud in the general elections of May 2005, in which over 190 protestors were reportedly killed by law enforcement authorities. After signing a statement admitting that their activities had been unconstitutional, they received a pardon and were freed. In the run-up to the legislative elections in Bahrain in September 2011, numerous human rights defenders and their relatives were arrested, dismissed from their jobs and subjected to intimidation and harassment for various politically motivated offences, including "participating in illegal gatherings". Following the presidential elections in December 2010 in Belarus, hundreds of persons protesting on election night were detained, including civil society activists, journalists, and opposition leaders, including presidential candidates. A peaceful protestor was subsequently sentenced to three years and six months in a labour colony on charges of mass disorder, for his participation in peaceful protests. He was initially detained for an administrative offence, but was later charged with a criminal offence, despite the fact that the police officer who had filed his arrest warrant stated in court that he had not actually seen him during the protest. Similarly, in the Russian Federation, charges of "mass disorder" have been pressed against peaceful protestors during election time. Many demonstrators were arrested and accused, inter alia, of "public intimidation" and "public incitation". Peaceful demonstrators in Azerbaijan have increasingly been targeted in the context of the forthcoming elections of October 2013, with several of them being arrested and/or fined. In Nepal in January 2006, four human rights defenders were arrested because of their involvement in the organization of large-scale peaceful demonstrations calling for a boycott of municipal elections scheduled for the following month.

20. The Special Rapporteur warns against the detention of peaceful demonstrators, with a view to preventing their participation in assemblies which are critical of the Government or ruling party. He is similarly concerned about restriction orders prohibiting demonstrators and defenders monitoring assemblies from remaining in, entering, or passing through a city, as occurred, for instance, in Malaysia in July 2011.

21. Fundamentally, the Special Rapporteur believes that all peaceful assemblies held during the electoral process, whether or not in support of the ruling party or the incumbent Government, should be entitled to equal treatment. Such assemblies should receive equal protection and facilitation from the State, in fulfilment of its positive obligation in this regard, irrespective of which category or group the demonstrators belong to. In this connection, the Special Rapporteur warns against the increased vulnerability of the aforementioned marginalized groups or groups most at risk from attacks, derogatory comments, stigmatization, and undue restrictions, with a view to serving political agendas, often from different parties. Some of them may also face the revocation of passports and work permits for having taken part in solidarity protests. As a consequence, peaceful assemblies organized by such groups, which may want to seize the opportunity of elections to draw attention to their respective plights, are adversely impacted. The Special Rapporteur is horrified by the aforementioned

incidents in Guinea in September 2009, where many women participating in the demonstration or present in the area were stripped naked and sexually assaulted, including by gang rape, both at the stadium and in detention. In Zimbabwe, demonstrators peacefully advocating women rights were brutalized in the context of elections. In the Islamic Republic of Iran, five students were among those killed by security forces in June 2009.

22. General Assembly laws, which are conducive to the enjoyment of the right to freedom of peaceful assembly, in compliance with international human rights law, should be applied to events related to the electoral process. In particular, these laws should allow and facilitate spontaneous assemblies, bearing in mind that greater tolerance is needed in times of elections, where diverse views and opinions are expressed.

23. A central part of the positive State obligation to protect those exercising the right to freedom of peaceful assembly is to ensure protection against agents provocateurs and counterdemonstrators, whose aim is to disrupt or disperse such assemblies. Such individuals include those belonging to the State apparatus or working on its behalf. The Special Rapporteur is concerned about the State's use of agents provocateurs to disrupt assemblies, as was reportedly the case in Senegal in January 2012, prior to the first round of the presidential elections. Similarly, greater efforts should be made to allow, protect and facilitate peaceful simultaneous assemblies, and peaceful counterdemonstrations, whenever possible. In sum, all forms of peaceful assemblies should receive greater protection and facilitation from the authorities.

24. In this regard, the Special Rapporteur recalls that the right to freedom of peaceful assembly does not require the issuance of a permit to hold an assembly. If necessary, a mere prior notification, intended for large assemblies or for assemblies at which some degree of disruption is anticipated, may be required. Spontaneous peaceful assemblies, which usually occur in reaction to a specific event — such as the announcement of results — and which by definition cannot be subject to prior notification, should be more tolerated in the context of elections. In addition, the Special Rapporteur considers laws establishing authorization procedures to be even more problematic in the context of elections, as authorization may be arbitrarily denied, especially when demonstrators intend to criticize Government policies. In the Sudan, a peaceful demonstration organized by an independent gubernatorial candidate for the April 2010 elections was curbed by police forces invoking the failure of the organizers to seek permission. Several protestors were arrested and/or injured by security forces.

25. On the contrary, elections should never be seen as a pretext for States to unduly restrict the right to freedom of peaceful assembly. As previously mentioned, blanket bans, which are intrinsically disproportionate and discriminatory, should be prohibited, and restrictions on a peaceful assembly in relation to its "time, place and manner" should be limited to the extent that such restrictions meet the aforementioned strict test of necessity and proportionality (see A/HRC/23/39, para. 59). In fact, given the importance of the rights to freedom of peaceful assembly and of association in the context of elections, the threshold for imposing such restrictions should be higher than usual: the criteria of "necessity in a democratic society" and "proportionality" should be more difficult to meet during election time. In this regard, the Special Rapporteur is dismayed that blanket bans have been used during election time, with a view to muzzling dissenting voices. In Kenya, in March 2013, following the results of the

presidential elections, the police chief reportedly banned all public gatherings, including "illegal groupings" around the Supreme Court, prayer meetings, political meetings and rallies, until a petition challenging the presidential poll results was heard and decided upon. That decision was reportedly based on the fact that demonstrations may have triggered animosity and violence. When justified, "time, place and manner'" restrictions which comply with international human rights norms and standards should be applied equally, once again, whether the peaceful assembly is in favour of or against the Government and the ruling party.

26. The Special Rapporteur further warns against imposing a state of emergency during election time, in order to temporarily suspend the rights to freedom of peaceful assembly. Should this nevertheless occur, he recalls that, according to the Human Rights Committee, during a state of emergency, the rights to freedom of peaceful assembly and of association should not be derogated since the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of assembly, is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.[10]

27. The Special Rapporteur recalls that organizers of peaceful protests should not bear responsibility for the unlawful behaviour of others, including in times of elections. In Malaysia, in May 2012, the federal Government announced that it would sue the organizers of the Bersih 3.0 rally of 28 April 2012 calling for free and fair elections, in relation to property which was allegedly destroyed during the said rally.

28. It is also important to allow the unimpeded access to and use of the Internet, in particular social media, and other information and communication technology, which are essential tools, especially in times of elections, by which the right to freedom of peaceful assembly can be exercised, but also monitored and reported upon in relation to human rights violations and abuses. In the Islamic Republic of Iran, in the context of the presidential elections of 2009, access to social media was temporarily blocked across the country, since many bloggers reported on violations against peaceful protestors and foreign media were denied access. In Nepal, in relation to the aforementioned demonstration, telephone lines and mobile phones were cut off in Kathmandu and other major cities by the Nepalese authorities.

29. The Special Rapporteur finally emphasizes again the crucial role played by human rights defenders, including journalists, who monitor assemblies and who have been targeted in the context of elections. In Belarus, in December 2010, the Chair of the Belarusian Helsinki Committee, among other activists, was arrested and detained by security forces while observing a demonstration organized by an opposition candidate, which was held in front of the Government headquarters. He was taken to pre-trial detention facility before being placed in police custody. In Malaysia, media personnel covering a protest organized by Bersih were allegedly targeted by security forces, while documenting police brutality, despite clearly identifying themselves as media personnel.

[10] General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 5.

IV. Freedom of association

A. Political parties

30. Everyone has the right to form or join a political party and conversely, no one should be compelled to belong to a political party. The Human Rights Committee, in its general comment No. 25 (para. 26), has stated that political parties and membership in parties play a significant role in the conduct of public affairs and the election process. Political parties are indeed the primary vehicles through which people can participate in the conduct of public affairs. The Special Rapporteur recognises political parties as a subset of associations included in the right to freedom of association enshrined in article 22 of the International Covenant on Civil and Political Rights. As such, the principles and minimum standards elaborated by the Special Rapporteur in his thematic report on best practices (A/HRC/20/27) generally apply to the regulation of political parties. Nevertheless, political parties are organizations formed to carry out particular objectives, that is, presenting candidates for elections in order to be represented in political institutions and to exercise political power on any level, national or local,[11] and may therefore be subject to specific requirements not necessary for other civil society organizations. According to the European Court of Human Rights, it is in the nature of the role they play that political parties, the only bodies which can come to power, also have the capacity to influence the whole of the regime in their countries. By the proposals for an overall societal model which they put before the electorate and by their capacity to implement those proposals once they come to power, political parties differ from other organizations which intervene in the political arena.[12]

31. The Special Rapporteur agrees with the Human Rights Committee, in paragraph 19 of general comment No. 25, that freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected and that States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder. As the Special Rapporteur noted previously, a minimum number of individuals may be required to establish a political party, but this number should not be set at a level that would discourage people from engaging in associations (A/HRC/20/27, para. 54). Other requirements might be in force, such as concerning geographic or ethnic representation, but the Special Rapporteur warns against this type of measure that is ultimately discriminatory to the formation of any political party. A registration regime is not necessary for the formation or operation of political parties, but where it is in place, it should never be subject to authorities' prior approval.

32. In the light of the fact that political parties have a decision-making role in ensuring pluralism and the proper functioning of democracy, a presumption in favour of formation of political parties means that adverse decisions should be strictly justified in accordance with the standards established by article 22 of the International Covenant on Civil and Political Rights in relation to proportionality and necessity in a democratic society. As for the right to freedom of peaceful assembly, the Special

[11] European Commission for Democracy through Law, Venice Commission, Code of conduct of good practice in the field of political parties, 2009, CDL-AD(2009)021.

[12] European Court of Human Rights, *Refah Partisi (The Welfare Party) and Others v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, 41344/98, 13 February 2003, para. 87.

Rapporteur believes that the proportionality and necessity test should be stricter in times of elections. In 2011, concerns were expressed about the case of a few Saudi citizens who submitted a request for recognition of what could have been Saudi Arabia's first political party, and who were a few days later arrested and requested to sign an undertaking that they would renounce their activities with the party. Those who refused to do so were placed in detention. The Special Rapporteur considers this to be an example of a blatant violation of the right to freedom of association. By all means, political parties whose applications have been rejected should be provided the opportunity to seek remedy before an independent and impartial court (A/HRC/20/27, paras. 60-61).

33. Political parties are entitled to a level playing field in order to compete fairly in the electoral contest. A level playing field does not mean that all parties should have the same treatment in every case; rather, they should receive equitable treatment based on reasonable and objective criteria. All parties complying with international human rights norms and standards are entitled to equality of opportunity. As such, at a minimum, no political party should be discriminated against, unfairly advantaged or disadvantaged by the State. In the present report, the Special Rapporteur emphasizes equality of opportunity for political parties in respect of their ability to access funding and to exercise their rights to freedom of expression, including through peaceful demonstrations.

34. In his second thematic report (A/HRC/23/39), the Special Rapporteur identified the ability of associations to access financial resources as an integral element of the right to freedom of association. The question of funding has far-reaching consequences on the right to freedom of association for political parties in the context of elections. Funding ensures that political parties are able to function on a day-to-day basis, to participate in the political arena, to represent a plurality of views, interests and perspectives, thus strengthening democracy. Funding may also have perverse effects on democratic potential, requiring certain regulation. The Special Rapporteur shares the view of the Human Rights Committee, in general comment No. 25 (para. 19) that reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

35. Some overarching principles could be drawn upon to guide the development and operation of political party financing rules. Public financing of political parties is often used as an avenue to provide equality of opportunity to all parties and guarantee competitive participation of diverse ideas and views. Public funding principally benefits parties that are unable to otherwise raise private funds for any number of reasons, including because they are smaller parties, or their ideology does not appeal to a majority of would-be donors, or those that represent marginalized groups, such as women and youth. Hence, public funding should not be used to interfere with a party's independence and further or create overdependency on State resources.[13]

36. More broadly, party resources should be differentiated from public resources. Public resources should not be used to tilt the electoral playing field in a party's favour and in particular the incumbent party or its candidates. This principle extends

[13] OSCE/Office for Democratic Institutions and Human Rights and the Venice Commission, *Guidelines on Political Party Regulation*, 2010, paras. 176-177.

to the use of State institutions, such as police forces, the judiciary, the prosecutorial authority, law enforcement agencies and others, which should be impartial when controlling or limiting the activities of political parties, such as by initiating politically motivated court cases against rival candidates, in effect, preventing them from engaging in campaign activities.

37. Pluralism is a hallmark of democracy with political parties as catalysts for debate and dialogue in democratic societies, such debate forming the basis of the voter's choice of representatives. The European Court of Human Rights considers that there can be no democracy without pluralism. It is for that reason that freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.[14] In another landmark decision, the Court found a violation of freedom of association stating that mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions. It further stated that the emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas.[15]

38. Political parties thus, have the freedom to choose and pursue ideologies, even if these are unpopular with the authorities or the public in general, including the ability to call for a boycott of elections, without fearing retaliation for doing so. The freedom of political parties to expression and opinion, particularly through electoral campaigns, including the right to seek, receive and impart information, is as such, essential to the integrity of elections. The Special Rapporteur recalls that, in its resolution 12/16, the Human Rights Council made clear that, in principle, no restriction is permissible with regard, inter alia, to: discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. The Special Rapporteur emphasizes that, only when a political party or any of its candidates uses violence or advocates for violence or national, racial or religious hatred constituting incitement to discrimination, hostility or violence (art. 20, International Covenant on Civil and Political Rights, also reflected in art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination),[16] or when it carries out activities or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5, International Covenant on Civil and Political Rights), can it be lawfully prohibited.

39. Central to the freedom of expression of political parties is the opportunity for them to have equal access to the media, particularly where the latter is State-owned or controlled. Legislation should provide a clear framework for the implementation of equal access to media, including during the campaign period. For example, all parties presenting candidates for elections are entitled to coverage by public media, and in this regard, the allocation of free media time ensures that all political parties,

[14] European Court of Human Rights, *Handyside v. United Kingdom*, para. 49.

[15] European Court of Human Rights, *Ouranio Toxo v. Greece*, Application No. 74989/01, 20 October 2005, para. 40.

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13584&LangID=E.

including small parties, are able disseminate their views and ideas.[17] The allocation of media time before an election should be equal, on the basis of the principles on equality before the law and non-discrimination. Denying specific parties' access to public media or providing biased coverage based on, for example, the unacceptability of the party or candidate's views is incompatible with the rights to freedom of association and expression. Attention should be paid to the distinction between access to the media as a political party and access to media as State officials due to the potential for unfair advantage that arises out of incumbent political parties using media coverage of official duties as a campaign platform.

40. Since the inception of his mandate, the Special Rapporteur has received numerous allegations to the effect that, during electoral periods, political leaders and supporters, particularly from the opposition, face heightened risks. Prior to, during and after an election, those who voice or have voiced dissent are in many countries subject to, inter alia, harassment, intimidation, corruption attempts, reprisals, arbitrary arrests and imprisonment, solely on account of their political opinions or beliefs. In this respect, the Special Rapporteur is disturbed about the case of an opposition leader from Belarus who was subject, in 2011, to a harsh sentencing, after he participated in a rally protesting the outcome of the presidential elections on 19 December 2011. In the Islamic Republic of Iran, concern was expressed in relation to former presidential candidates who staged a rally in solidarity with protesters in Egypt, for which they had sought permission from the authorities, and who have been kept largely "incommunicado" in their homes since February 2011.

41. Political parties and their members unduly restricted from exercising their right to free association should have recourse to prompt and effective remedies. The Special Rapporteur again stresses that States have an obligation to provide independent and impartial institutions, including electoral management bodies and media regulatory authorities, in addition to an independent judiciary, to ensure that electoral processes are not exploited, thereby creating an uneven playing field for any political party. In order to be effective, the regulatory body should be independent from executive powers, be empowered and have adequate capacity to formulate, monitor and enforce regulations. These are the key conditions for ensuring the respect of the right to freedom of association in the context of elections.

B. Civil society organizations

42. Civil society organizations have also an important role to play in the context of elections. The role of civil society in contributing to and sustaining a robust democracy cannot be underestimated. In different capacities, organizations undertake various activities to advocate for the concerns and interests of their beneficiaries, to contribute to ensuring the integrity of the electoral process, to further contribute to the achievement, protection and strengthening of democratic goals and standards, and to keeping authorities accountable to the electorate. Among other things, civil society organizations promote political participation, undertake voter education, campaign for good governance reforms, provide vehicles for the expression of different interests, but also act as platforms that cut across tribal, ethnic, linguistic and other barriers, and catalyse public debate on issues that affect them.

[17] OSCE/Office for Democratic Institutions and Human Rights and the Venice Commission, *Guidelines on Political Party Regulation*, 2011, para. 147.

43. The Special Rapporteur stresses that the right to freedom of association necessarily entails the freedom of associations to decide and engage in activities of their own choosing and this extends to those wishing to engage in election-related activities. Thus, among other liberties, associations have the freedom to advocate for electoral and broader policy reforms; to discuss issues of public concern and contribute to public debate; to monitor and observe election processes; to report on human rights violations and electoral fraud; to initiate polls and surveys, such as those conducted during the voting process; to freely access the media, including new media, such as the Internet; to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or online; to build coalitions and networks with other organizations, including from abroad; to engage in fundraising activities; to engage in election observation, voter education and the inspection of voters' rolls; to interact with international and regional human rights bodies; and to provide any forms of technical assistance and international cooperation.

44. Civil society organizations are inherently different from political parties, the ultimate objective of which is to promote candidates who will run for elections with the aim to govern. Thus, different regulations and restrictions are applicable to the former. In line with this, associations should not be compelled to register as political parties and conversely, they should not be denied registration as associations because they carry out what the authorities consider to be "political" activities. It is a source of serious concern that the term "political" has been interpreted in many countries in such a broad manner as to cover all sorts of advocacy activities; civic education; research; and more generally, activities aimed at influencing public policy or public opinion. It is clear that this interpretation is solely motivated by the need to deter any forms of criticism. In this regard, concern was expressed about the situation in the Russian Federation, where a human rights organization was the subject of an inspection from the Prosecutor's General Office, which claimed that the organization had engaged in "political activity" by "purposefully influencing the image of the electoral commissions and other State organs, through participation in the electoral process", after some members of the organization alleged irregularities during the December 2011 elections. The Special Rapporteur recalls that the right to freedom of association is itself a civil and political right facilitating the participation of all in decision-making of public affairs. Freedom of association provides individuals with unique opportunities to express their political opinions and to engage in cultural, economic and social activities. In fact, associations accused of engaging in "political" activities are often those that seek to keep Governments accountable, through good governance and rule of law initiatives, such as anti-corruption measures, human rights campaigns, institutional reforms and similar measures designed to strengthen democracy. The Special Rapporteur is of the view that labelling associations as "political", and on that basis associating them with opposition parties or preventing them from operating, is largely intended to silence voices that are critical of Government policies and practices.

45. Although civil society organizations play an essential role during election time, freedom of association is, in many countries, restricted before, during and after elections. As noted by the Special Rapporteur on the situation of human rights defenders, acts of intimidation against civic activists often start long before the beginning of election campaigns (A/HRC/13/22 para. 56). Restrictions placed on unregistered associations preventing them from taking part in activities related to the electoral process is one way of obstructing the work of independent voices. As the

Special Rapporteur has stated in previous reports, the right to freedom of association applies equally to associations that are not registered (A/HRC/20/27, para. 56). Because of their marginalization, women, youth, minorities, indigenous groups or persons with disabilities may form or join unregistered associations for the advancement of their interests. States should play an active role in removing barriers that keep these marginalized and disempowered groups from participating in public life and exercising their rights in the context of elections. This is vital to ensure that their voices are heard and their causes taken into account in the policies of the next Government.

46. The freedom of associations to engage in activities related to the electoral process should therefore be guaranteed to all associations, whether they are apolitical in their means and operations, partially or totally supportive of the Government or express criticism of Government policies. Hence, no associations should be compelled to express support for any electoral candidate. Nevertheless, it is important for any organization which voluntarily supports a particular candidate or a party in an election to be transparent in declaring its motivation, as its support may impact on elections' results. The Special Rapporteur is of the view that the strength of a democracy can be gauged by the extent to which diverse views and differing opinions are accommodated and even encouraged in public debate.

47. The right to freedom of association is an essential component of democracy that empowers men and women and is therefore particularly important where individuals may espouse minority or dissenting religious or political beliefs (Council resolution 15/21, preamble). As such, no restrictions should be placed on associations, solely because they do not share the same views as those in authority.

48. Governments in many countries are increasingly imposing restrictions on civil society's ability to engage in the establishment of transparent, accountable and fair democratic machinery and also from undertaking activities such as election monitoring and voter mobilization. Barriers include the prohibition for certain groups to register as associations; the prohibition from carrying out some activities where a restrictive list of authorized activities is not provided by the legal framework; the obligation to adopt negative labels; the denial of accreditations to associations to observe and monitor elections; or even the imposition of sanctions or threats of sanctions for engaging in activities related to the electoral process. In the Russian Federation, the implementation of the 2012 Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Function of Foreign Agents, the compliance of which with international standards is analysed in depth in the Special Rapporteur's second thematic report to the Human Rights Council (A/HRC/23/39), has led to audits and inspection campaigns against numerous civic organizations that have conducted "political activities" and have failed to register as a "foreign agent". One of them, Golos Association for the defence of the rights of voters, whose Internet website was hacked in the run-up to the parliamentary elections, was, in April 2013, the first organization to be penalized under the new law.

49. As described in previous reports by the Special Rapporteur, any restrictions must be permitted by international law, and thus meet the strict requirements of international human rights law. In the context of elections, the Special Rapporteur believes that the test threshold should be raised to a higher level. It is therefore, not sufficient for a State to invoke the protection of the integrity of the election process,

the need to ensure non-partisan and impartial elections, the need to preserve peace or security to limit these rights, insofar as the context of elections is a critical time when individuals have a say about the fate of their country. In this regard, the Human Rights Committee stated that the reference to "democratic society" in the context of article 22, indicates in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone of a democratic society.[18]

50. In some cases, State interference does not occur when an association is formed, but while an association is carrying out its activities. Often, restrictions occur when authorities are faced with minority or dissenting views, or even when authorities fear being held accountable for their failure to respect human rights. In Zimbabwe, the offices of the Election Support Network, a coalition of 31 non-governmental organizations formed in 2000 to promote free and fair elections, were arbitrarily searched, on the grounds that the organization allegedly had "subversive material, documents, gadgets or recordings and had contravened the Immigration Act". These searches have been perceived by civil society actors as an attempt to intimidate and silence their voices in the context of the 2013 referendum and elections.

51. It is disturbing that in the context of elections, some States resort to intimidation, harassment, civil and criminal defamation, or threats against associations' leaders who aim to express their opinions, grievances and aspirations. The Special Rapporteur expresses grave concerns about the following situations where international human rights norms and standards related to freedom of association were violated. In Malaysia, one of the leaders of the Coalition for Fair and Free Elections who has monitored the 2013 elections in the country, had been, on various occasions, the target of severe and sustained acts of harassment, intimidation and smear campaign describing her as "an enemy who tried to smear the nation's name". In Nicaragua, human rights defenders active in associations, who expressed concerns over a decision of the Constitutional Court allowing for the re-election of the President were reportedly subjected to death threats, assaults and acts of intimidation. In Rwanda, a regional umbrella organization working on human rights issues in the country reportedly experienced threats and intimidation after it published a controversial report on legislative elections.

52. In other cases, civic activists faced arbitrary detention and long prison terms after unfair trials. In Belarus, where multiple home and office raids, arrests, trials and detention of numerous human rights defenders active in civic associations took place as a result of their legitimate human rights activities during the presidential elections in December 2010, including the sentencing of the Chairperson of the Human Rights Centre "Viasna" to four and one-half years in detention. In the Islamic Republic of Iran, a prominent lawyer was sentenced in 2011 to 11 years of imprisonment, which was later reduced to a six-year prison term, and a 10-year ban on practising as a lawyer for "propaganda against the State", "collusion and gathering with the aim of acting against national security" and "membership of the Defenders of Human Rights Centre". The accusations brought against the human rights lawyer were allegedly based on interviews she had had with media in relation to her clients, who had been imprisoned after the June 2009 presidential election in the Islamic Republic of Iran.

[18] Human Rights Committee, *Boris Zvozskov et al v. Belarus* (2001), CCPR/C/88/D/1039/2001, para. 7.2.

53. Activities that involve monitoring and observation of the conduct of election processes by international groups may also be subject to undue restrictions. In this context, it is worth recalling that the protection of State sovereignty against external interferences is not listed as a legitimate interest in article 22 of the International Covenant on Civil and Political Rights. The Special Rapporteur underscores the fact that States cannot refer to additional grounds, even those provided by domestic legislation, to restrict the right to freedom of association. Hence, restrictive measures imposed under this guise unduly limit associations in their free operations. Governments that exclude independent international observers from electoral processes by enacting legislation to this effect, by making the process of registering as an election monitor burdensome, or by inviting only friendly observation groups that will not be critical in their monitoring, thus diluting or countering any criticism by independent impartial groups, do not guarantee the right to freedom of association. The Special Rapporteur recognizes that elections constitute a significant event in the life of a nation and should be protected from foreign interference. Nevertheless, he also recognizes the need to establish clear, specific and objective criteria that would enable independent and impartial election observation by all monitors, including from abroad. In this regard, blanket restrictions on international election observers groups are inherently disproportionate and thus incompatible with international law standards.

54. In the run-up to elections or following contested elections, there may also be instances of Governments' blocking funding for civil society organizations, including those with mandates that are closely related to the conduct of elections. For instance, in the run-up to the 2013 elections, the Government of the Bolivarian Republic of Venezuela adopted the law against organized crime and terrorist financing, which restricts funding of "foundations, civic associations, non-profit associations, as well as associations having political ends or groups of individuals who run for elections". The Special Rapporteur, in his second thematic report (A/HRC/23/39), established access to funding for civil society organizations as an integral part of the right to freedom of association. He stated that any constraints on associations' ability to access foreign funding should be necessary in a democratic society and that common justifications offered by States, such as counter-terrorism measures, protection of State sovereignty, enhancement of aid effectiveness, and the improvement of transparency and accountability of civil society, often do not meet this strict standard.

55. Cases of arbitrary termination, suspension or closure of associations as a result of activities carried out in the context of elections are another source of concerns. In early April 2012, the Government of Swaziland deregistered the Trade Union Congress of Swaziland and declared it illegal, after some leaders of the organization called for the boycott of the 2013 elections. Such a drastic decision does not comply with international norms and standards pertaining to freedom of association, which make clear that termination, suspension or closure of associations are only possible by a court judgement based on clear and imminent danger when an association resorts to violence, or aims at the attainment of its objective by violence or by instigating discrimination, hostility or violence, or is aimed at the destruction of the rights and freedoms enshrined in international human rights law.

V. Conclusions and recommendations

56. The Special Rapporteur wishes to underscore the fact that electoral periods are a unique moment in the life of a nation to confirm, and even strengthen, democratic principles, such as non-discrimination, gender equality, pluralism of views and parity. Democracy is a singular way of allowing for effective popular participation in decision-making processes at both national and local levels. He stresses that electoral periods are such an important time to build democratic, responsive and accountable institutions and that very strict and clear safeguards should be put in place by States to prevent undue interference in public freedoms, in particular in the rights to freedom of peaceful assembly and of association. Further, in times of elections, States should make greater efforts to facilitate and protect the exercise of these core rights, which should be enjoyed by everyone, especially by members of groups at risk. In effect, genuine elections cannot be achieved if the rights to freedom of peaceful assembly and of association are curtailed.

57. The Special Rapporteur is deeply concerned about the increase in human rights violations and abuses in several parts of the world, committed against those who exercise or seek to exercise the rights to freedom of peaceful assembly and of association in the context of elections, which indelibly stain such elections. In the light of this, he wishes to make the following recommendations, which should be read in conjunction with those already formulated in his two thematic reports presented at the Human Rights Council in 2012 (A/HRC/20/27, para. 84-100) and 2013 (A/HRC/23/39, para. 81-83), some of which are reiterated here.

58. The Special Rapporteur calls upon States in times of elections:

(a) To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems, as they allow for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected;

(b) To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, any registered or unregistered entities, including women, those victims of discrimination because of their sexual orientation and gender identity, youth, persons belonging to minorities, indigenous peoples, non-nationals, including stateless persons, refugees or migrants, and members of religious groups, as well as activists advocating economic, social, and cultural rights;

(c) To ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(d) To greater facilitate and protect the exercise of the rights to freedom of peaceful assembly and of association, and in this regard, be particularly vigilant in relation to the specific needs of the aforementioned groups which are at greater risk of attacks and stigmatization of all types;

(e) To ensure that an enabling framework is provided for political parties to be formed — regardless of their political ideology — and to enjoy the level playing field, in particular in relation to their ability to access funding, and to exercise their rights to freedom of expression, including through peaceful demonstrations and access to the media;

(f) To increase the threshold for imposing legitimate restrictions on the rights to freedom of peaceful assembly and of association, that is, to ensure that the strict test of necessity and proportionality in a democratic society, coupled with the principle of non-discrimination, is made particularly difficult to meet;

(g) To ensure that a well detailed and timely written explanation for the imposition of any restriction is provided, and that such restrictions can promptly be the subject of an independent and impartial judicial review;

(h) To provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression;

(i) To allow unimpeded access to and use of information and communication technology through which the right to freedom of peaceful assembly and of association can be exercised;

(j) To ensure that those who violate and/or abuse the rights of individuals to freedom of association and of peaceful assembly are held fully accountable by an independent and democratic oversight body and by the courts of law;

(k) To ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress.

59. The Special Rapporteur calls upon national human rights institutions complying with the Paris Principles to play a key role in monitoring and publicly reporting on the fulfilment by the States of the abovementioned recommendations.

60. The Special Rapporteur calls upon election observers to place particular emphasis on the enjoyment of the rights to freedom of peaceful assembly and of association when determining whether an election was genuine.

61. The Special Rapporteur calls upon international and regional human rights mechanisms, including special procedures, treaty bodies and the universal periodic review, to pay specific attention to the issue of elections as a context where the rights of freedom of peaceful assembly and association are more likely to be curtailed.

62. The Special Rapporteur again encourages the Human Rights Committee to consider developing general comments on articles 21 and 22 of the International Covenant on Civil and Political Rights, with a particular focus on the enjoyment of both rights in the context of elections.

63. The Special Rapporteur calls upon the General Assembly and the Human Rights Council to address thoroughly the issue of human rights violations and abuses in the context of elections.

64. The Special Rapporteur calls upon the diplomatic community and other relevant stakeholders to publicly denounce violations and abuses committed against those exercising or seeking to exercise their rights to freedom of peaceful assembly and of association in the context of elections, and to provide support to these victims.

United Nations A/68/300

General Assembly

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Sixty-eighth session
Item 113 of the provisional agenda*
Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Note by the Secretary-General**

1. In accordance with the provisions of Article 12, paragraph 2, of the Charter of the United Nations and with the consent of the Security Council, the Secretary-General has the honour to notify the General Assembly of matters relative to the maintenance of international peace and security that are being dealt with by the Security Council.

2. The matters relative to the maintenance of international peace and security of which the Security Council is seized are set out below. Items with which the Council has ceased to deal since the notification to the General Assembly at its sixty-seventh session (A/67/300) have been deleted. Those deletions, made pursuant to the note by the President of the Security Council dated 26 July 2010 (S/2010/507), are recorded in document S/2013/10/Add.9.

1. The Palestine question.
2. The India-Pakistan question.
3. The Hyderabad question.
4. Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General.
5. Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council.
6. The situation in the Middle East.
7. Letter dated 31 December 1960 from the Minister for External Affairs of Cuba addressed to the President of the Security Council.

* A/68/150.
** The present notification relates to the period from 1 September 2012 to 31 August 2013.

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8. The situation in Cyprus.

9. The situation in the India/Pakistan subcontinent.

10. Letter dated 3 December 1971 from the Permanent Representatives of Algeria, Iraq, the Libyan Arab Republic and the People's Democratic Republic of Yemen to the United Nations addressed to the President of the Security Council.

11. Complaint by Cuba.

12. Arrangements for the proposed Peace Conference on the Middle East.

13. The situation concerning Western Sahara.

14. The situation in Timor-Leste.

15. The Middle East problem, including the Palestinian question.

16. The situation in the occupied Arab territories.

17. The question of the exercise by the Palestinian people of its inalienable rights.

18. The situation between Iran and Iraq.

19. Letter dated 1 October 1985 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

20. Letter dated 4 February 1986 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council.

21. Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of Burkina Faso to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Permanent Representative of Oman to the United Nations addressed to the President of the Security Council.

22. Letter dated 19 April 1988 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

23. Letter dated 2 February 1990 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council.

24. United Nations peacekeeping operations.

25. The situation between Iraq and Kuwait.

26. The situation in Liberia.

27. The situation in Somalia.

28. The situation in Bosnia and Herzegovina.

29. The situation in Georgia.

30. The question concerning Haiti.

31. The situation in Burundi.

32. The situation in Afghanistan.

33. The situation in Sierra Leone.

34. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

35. International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

36. The situation in the Great Lakes region.

37. The situation concerning the Democratic Republic of the Congo.

38. The situation in the Central African Republic.

39. Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999).

40. Children and armed conflict.

41. The situation in Guinea-Bissau.

42. Protection of civilians in armed conflict.

43. General issues relating to sanctions.

44. The situation in the Middle East, including the Palestinian question.

45. Women and peace and security.

46. Briefing by the President of the International Court of Justice.

47. Briefing by the United Nations High Commissioner for Refugees.

48. Briefing by the Chairperson-in-Office of the Organization for Security and Cooperation in Europe.

49. Meeting of the Security Council with the troop- and police-contributing countries pursuant to resolution 1353 (2001), annex II, sections A and B.

50. Threats to international peace and security caused by terrorist acts.

51. Briefings by Chairmen of subsidiary bodies of the Security Council.

52. The situation in Côte d'Ivoire.

53. Security Council mission.

54. The promotion and strengthening of the rule of law in the maintenance of international peace and security.

55. Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939);

    Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943).

56. Central African region.

57. Non-proliferation of weapons of mass destruction.

58. Reports of the Secretary-General on the Sudan.

59. Post-conflict peacebuilding.

60. The situation concerning Iraq.

61. Threats to international peace and security.

62. Non-proliferation.

63. Peace consolidation in West Africa.

64. The situation in Myanmar.

65. Non-proliferation/Democratic People's Republic of Korea.

66. Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920).

67. Maintenance of international peace and security.

68. The situation in Chad, the Central African Republic and the subregion.

69. Peace and security in Africa.

70. Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security.

71. Letter dated 4 June 2010 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the President of the Security Council (S/2010/281) and other relevant letters.

72. Letter dated 18 December 2010 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/2010/646).

73. Letter dated 6 February 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council (S/2011/58).

74. The situation in Libya.

75. The situation in Mali.

United Nations A/68/301

General Assembly

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Sixty-eighth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization

Report of the Secretary-General

Summary

The present report describes trends and significant issues in electoral assistance provided to Member States by the United Nations system over the past two years. Compared to the previous two-year period, the number of Member States receiving electoral assistance increased slightly to 59.

The report notes progress in strengthening coherence and coordination within the United Nations system, under the auspices of the focal point for electoral assistance. It also discusses cooperation with non-United Nations organizations. The report identifies ways to continue strengthening internal and external coordination, including through the integration of United Nations electoral assistance in mission settings.

With respect to gender equality in elections, the report notes that although there has been a steady increase in the share of women in parliaments worldwide, the global rate of elected women remains low and their participation in politics still falls far short of expectations. The report discusses the activities of the United Nations system in promoting the political participation of women and in supporting the efforts of Member States to meet their international obligations and commitments.

* A/68/150.

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The report also notes that elections conducted over the past two years have again demonstrated that there is a complex relationship between the sophistication of the technology used in an election and the level of confidence in the electoral process. In order to ensure that innovations are sustainable, new technologies are best introduced on a case-by-case basis in accordance with national needs and financial capacities.

The report discusses how principles and practices are applied in United Nations electoral assistance. It notes that while the technical aspects of an election are important, they are not an end in itself. It recalls that the Universal Declaration of Human Rights identifies the will of the people as the basis of the authority of government and that elections are the process by which this will is ascertained. United Nations assistance therefore aims to help authorities conduct elections that are a legitimate expression of the people's will and that enjoy credibility among national stakeholders.

In countries emerging from conflict, the highest objective of United Nations electoral assistance is to support genuine elections that further sustainable peace and stability. United Nations assistance focuses on strengthening the confidence and trust of national stakeholders in the electoral process and its outcome and on ways to prevent violence around elections. United Nations electoral assistance is most effective in yielding sustainable and comprehensive results when it is provided as part of a package of investments in good, effective governance at all levels, with the broader aim of promoting peace, stability and democratic governance. A good election alone is rarely sufficient to produce good governance; good governance on the other hand tends to produce good elections.

I. Introduction

1. The present report has been prepared to comply with General Assembly resolution 66/163 and describes United Nations electoral activities since the previous report on this subject (A/66/314).

2. Electoral assistance can be provided to a Member State only upon request, or based on a mandate from the Security Council or General Assembly. Electoral assistance is provided in conformity with the principle of the sovereign equality of States and the realization that there is no single electoral methodology or system that is appropriate for all countries. A needs assessment is always carried out before any electoral assistance is agreed or provided, in order to ensure that assistance is tailored to the specific needs of the country or situation.

3. The United Nations generally supports elections in the form of technical assistance. Other forms of assistance include expert panels. In the past, the United Nations has also organized and conducted elections, or verified and certified them, but these forms of assistance are now rarely used. Furthermore, the United Nations has not observed an election since 2001. During the reporting period, the United Nations provided electoral assistance to 59 Member States, 12 of them on the basis of a Security Council mandate (see annex II).

4. The period under review has shown a continuing interest among Member States for United Nations assistance in conducting electoral processes, as well as an evolving diversity in the nature of the assistance sought. The Organization has faced high expectations and challenges in helping to bring about peaceful, credible and cost-effective elections. Looking back at the experience over this period, the report sets out a number of comments and reflections on the nature and purpose of international electoral assistance, the role of elections in preventing conflict, the introduction of technology, efforts to bring about credible and inclusive elections, women's participation and the challenges of coordination in an active field of international support.

II. United Nations electoral assistance during the reporting period

A. Mandates

5. In its resolution 66/163, the General Assembly encouraged the Secretary-General to continue to respond to the evolving nature of the requests for electoral assistance and the growing need for specific types of medium-term expert assistance aimed at supporting and strengthening the capacity of the national institutions of the requesting Government. This evolving nature is reflected in the diversity of United Nations entities whose mandate or activities include electoral support.

6. As mandated by the General Assembly and most recently confirmed in its resolution 66/163, the Under-Secretary-General for Political Affairs is the United Nations focal point for electoral assistance (the focal point). In its resolution, the General Assembly reaffirmed the clear leadership role of the focal point within the United Nations system, including in ensuring system-wide coherence and consistency, in strengthening United Nations electoral institutional memory and in

the development, dissemination and issuance of electoral assistance policies. The focal point is also charged with maintaining a diverse roster of pre-screened electoral experts who can be quickly deployed to any United Nations assistance presence.

7. The focal point is supported in these activities by the Electoral Assistance Division of the Department of Political Affairs. The Division functions as a global service provider to clients across the United Nations system. It is responsible for electoral needs assessments for the Organization, recommends to the focal point the parameters for all United Nations electoral assistance, advises on the design of electoral mission components or assistance projects and maintains the institutional memory of the Organization and its roster of experts. It provides, on behalf of the focal point, ongoing political and technical guidance to all United Nations entities involved in electoral assistance, including on electoral policies and good practices.

8. The United Nations Development Programme (UNDP) is the major implementing body of the Organization for support to developing electoral institutions, legal frameworks, processes and support to elections outside the peacekeeping or post-conflict context. In its resolution 66/163, the General Assembly requested UNDP to continue its democratic governance assistance programmes in cooperation with other relevant organizations, in particular those that promote the strengthening of democratic institutions and linkages between civil society and Governments.

9. In peacekeeping or post-conflict environments, electoral assistance is generally provided through components of field missions under the aegis of the Department of Peacekeeping Operations or the Department of Political Affairs. Military and police components of peacekeeping missions support national law enforcement agencies in providing security for electoral processes and UNDP frequently provides support to electoral assistance mandates undertaken by such field missions. The Electoral Assistance Division provides political and technical guidance to these electoral assistance providers on the ground. In countries with peacekeeping, peacebuilding or special political missions, electoral assistance is delivered in a fully integrated manner, irrespective of whether the mission is structurally integrated.

10. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues to provide training and advice on human rights monitoring in the context of elections, supports and organizes campaigns for violence-free elections, engages in advocacy for electoral laws and institutions that are compliant with human rights and monitors and reports on human rights violations during electoral processes.

11. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) is mandated to provide, through its normative support functions and operational activities, guidance and technical support to all Member States, at their request, on gender equality, the empowerment and rights of women and gender mainstreaming. It promotes gender equality and women's participation in political processes. UN-Women is also mandated to lead, coordinate and promote the accountability of the United Nations system in its work on gender equality and the empowerment of women. It provides training and guidance on promoting gender equality and women's participation in electoral processes.

12. The United Nations Educational, Scientific and Cultural Organization (UNESCO) is the United Nations specialized agency tasked with promoting and supporting freedom of expression, press freedom and freedom of information. Free, independent media, online as well as offline, are essential to the transition towards democracy. To this end, the aim of UNESCO regarding elections is to strengthen the capacity of the media to provide fair and balanced coverage of electoral activities.

13. Other entities of the United Nations system involved in activities related to elections include the Department of Field Support, which is primarily responsible for providing administrative and logistical support services to United Nations peacekeeping operations, special political missions and other field presences; the United Nations Office for Project Services (UNOPS), which provides support to electoral activities, largely in post-conflict/peacekeeping environments, in partnership with the Department of Political Affairs, the Department of Peacekeeping Operations, UNDP and Member States; the United Nations Volunteers programme, which provides electoral staff to work in UNDP, the field operations of the Department of Peacekeeping Operations and the Department of Political Affairs; the Peacebuilding Fund, which can exceptionally support elections at critical junctures for peacebuilding; and the United Nations Democracy Fund, which supports projects that strengthen the voice of civil society, promote human rights and encourage the participation of all groups in democratic processes.

B. Cooperation and coordination within the United Nations system

14. In its resolution 66/163, the General Assembly reiterated the need for ongoing comprehensive coordination, under the auspices of the focal point, between the Electoral Assistance Division, UNDP, the Department of Peacekeeping Operations and the Department of Field Support to ensure coordination and coherence and avoid duplication. The General Assembly also encouraged further engagement of OHCHR in this context. I am pleased to report that significant progress has been made in developing the policy and institutional framework to strengthen system-wide coherence:

(a) I facilitated system-wide discussions which more clearly delineated respective roles and responsibilities, including that of the focal point, taking into account mandates as defined by the General Assembly and appropriate United Nations bodies;

(b) Notable strides were made in the development of system-wide electoral policy, covering issues such as the principles and types of electoral assistance and the conduct of needs assessment missions. Work continues by the focal point on further detailing system-wide policy, in close consultation with United Nations system entities;

(c) The system-wide discussion on operational arrangements, including on recruitment and procurement processes, which I mentioned in my previous report,[1] is close to conclusion;

(d) The Department of Political Affairs, UNDP and the Department of Peacekeeping Operations have completed a joint review of integrated electoral

[1] See A/66/314, para. 17 (b).

assistance in mission settings. The findings will be used in the development of policy and practical guidance to further strengthen the integrated delivery of United Nations electoral assistance;

(e) The Inter-Agency Coordination Mechanism for Electoral Assistance, chaired by the Electoral Assistance Division, continued to meet on a monthly basis to exchange information, coordinate electoral activities and discuss the development of electoral policy. It also held two special meetings at director level during the reporting period to address a number of strategic questions, such as the implementation of electoral policy and the sharing of information among United Nations entities. As a sign of its relevance in coordinating system-wide efforts, UNESCO joined the mechanism in 2012;

(f) Discussions continue between the Department of Political Affairs and OHCHR on the development of coordination methods regarding human rights and electoral assistance and between the Department of Political Affairs and UN-Women on coordination methods regarding gender equality and electoral assistance.

C. Cooperation with other organizations

15. The United Nations continues its support to a number of global tools and initiatives aimed at promoting capacity-building, institutional memory and knowledge-sharing in the area of elections. These include: the ACE Electoral Knowledge Network, the Building Resources in Democracy, Governance and Elections (BRIDGE) project, and the Global Electoral Organization (GEO) conference.[2] During the reporting period, the United Nations worked with other partners to help ensure the sustainability and continued relevance of the ACE Network, including by assisting with the update of the ACE content and the translation of the ACE encyclopaedia into Arabic, Spanish and French. UNDP and UN-Women are partners in the International Knowledge Network of Women in Politics (iKNOW). The network provides a platform for exchanging information and networking among various interested stakeholders, to promote women's increased role and presence in political processes around the world.

16. Through its continued partnership in BRIDGE, the United Nations has provided capacity-building and training support to Member States. The BRIDGE project was expanded with a module on gender and elections developed by UNDP, which is being implemented in a number of countries by UNDP and UN-Women. The United Nations also continued its support to, and partnership with, the GEO conference, as the biggest global forum of electoral practitioners, to share experiences and discuss new ideas in the management of elections.

17. In line with the provisions of the framework for cooperation between the secretariat of the Southern African Development Community (SADC) and the Department of Political Affairs, on behalf of the United Nations Secretariat, in September 2010, the United Nations assisted SADC with the establishment of its electoral support unit and with its efforts to establish the SADC Electoral Advisory Council. Support was also provided to the Electoral Commissions Forum of SADC countries. The United Nations continues to work on electoral issues in collaboration with regional intergovernmental organizations including the African Union, the

[2] For a description of these three bodies, see A/66/314, para. 21.

European Union, the Organization for Security and Cooperation in Europe (OSCE) and many others. The United Nations provides electoral advice and support to the African Union through the United Nations office at the African Union and has also initiated discussions with the League of Arab States on areas in which capacity-building and training support could be provided to the League.

18. UNDP continues to deliver a significant part of its electoral assistance activities within the formal framework of its partnership with the European Union. In addition to joint projects at the country level, the partnership has hosted a number of global thematic workshops, including on elections and violence, the use of technology and sustainability in electoral administration.

19. The Electoral Assistance Division continues to participate in discussions to further enhance the performance of electoral observers, even though the United Nations itself rarely observes elections. The Declaration of Principles for International Election Observation, launched at the United Nations in 2005, had been endorsed, as of May 2013, by 44 international and regional organizations. It establishes guidelines for impartial and professional observation of elections by intergovernmental and non-governmental organizations and aims to standardize observation methodologies, including respect for national sovereignty. The Declaration has gained widespread recognition and now stands at the heart of credible international election observation. Moreover, in 2012, the Secretariat hosted the launch of the Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations. The Declaration, which as of July 2013 had been endorsed by 198 non-partisan citizen election observation and monitoring organizations from 80 countries, provides an important set of standards for accountability among non-partisan election monitoring organizations.

III. Gender equality and elections

20. According to data collected by the International Parliamentary Union, as of July 2013, women accounted for 21.3 per cent of parliamentarians in single and lower houses of parliament worldwide. This is almost double the 1995 proportion, when the global average for women's representation in parliaments was 11.6 per cent. While this is a progressive increase, the global rate of women's representation remains low considering that women comprise more than half the global population. More concerted efforts are needed in every region of the world to improve the situation.

21. Removing barriers to all aspects of women's political participation, including as voters, candidates and election officials, is a matter of fundamental human rights. I encourage Member States to take all the necessary steps to ensure that women do not face discrimination in any of the stages of the electoral process, including voter registration, civic education, polling, candidate security and media access. In certain circumstances, temporary special measures may be needed to overcome the challenges facing women in political and electoral processes.

22. Supporting national efforts to strengthen women's participation in elections continues to be a priority for the United Nations, as demonstrated in the development of United Nations electoral policies and in advisory and advocacy activities undertaken by the Organization. Within their respective mandates, relevant United Nations entities have assisted the efforts of Member States to meet their

international obligations and commitments, including those deriving from the Convention on the Elimination of All Forms of Discrimination against Women and the related general recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination against Women on article 4, paragraph 1 of the Convention, the Beijing Declaration and Platform for Action, General Assembly resolution 66/130 on women and political participation and Security Council resolution 1325 (2000).

23. Through its missions and electoral support projects, the United Nations continues to advocate for the participation of women in electoral processes and has encouraged and supported efforts by national authorities to include a gender perspective in their electoral legislation. Where appropriate, and upon request, the Organization has provided technical advice to Member States on the differential impact of electoral systems on women's political participation, taking into consideration that there is no single type of electoral system that would fit all circumstances and that it is up to each Member State to decide, as a matter of national sovereignty, which system would addresses its needs most effectively. The Organization has also contributed to numerous targeted outreach attempts to mobilize women's participation in elections as voters and candidates.

24. In collaboration with entities of the United Nations system, the focal point codified the central importance of gender considerations in a number of electoral policies adopted in 2012. Fully mainstreaming a gender perspective in all activities is now established as one of the principles of all United Nations electoral assistance. These principles also call for the United Nations to promote the involvement of underrepresented and marginalized groups, including women, in electoral processes. Considerations on gender equality have been mainstreamed into the planning and reporting of needs assessments. Every needs assessment must include an analysis of the challenges and opportunities for women's political participation in the country concerned, including the potential value of temporary special measures. Specific recommendations are also made in assessment reports on how best to increase women's participation. These measures draw on the well-established practice of United Nations electoral assistance teams to raise and discuss the representation of women with national authorities in countries where assistance is being provided.

25. The Department of Peacekeeping Operations, the Department of Field Support and the Department of Political Affairs have continued to revise their joint guidelines on enhancing the role of women in post-conflict electoral processes, originally issued in 2007, in collaboration with UNDP and UN-Women. UNDP has developed knowledge products in the field of political party engagement and women's political participation, including a 2012 guidebook on empowering women for stronger political parties in partnership with the National Democratic Institute. In the Asia-Pacific region, UNDP has facilitated the development of national action plans for women's political empowerment in three countries and continues its support in this regard to other countries.

IV. United Nations resources for electoral assistance

26. The regular budget of the Electoral Assistance Division covers its core staff costs, while extrabudgetary funds are also used for various assistance activities. Electoral assistance projects managed by UNDP country offices are typically funded

through voluntary contributions by Member States that often result in multi-partner basket funds, which include national counterparts in the management structure in order to ensure greater national ownership. In integrated peacekeeping and special political or peacebuilding missions with an electoral component, the mission budget covers some of the electoral work, while the balance, often quite substantial, is funded through UNDP multi-donor funding mechanisms. The Peacebuilding Support Office has occasionally utilized the Peacebuilding Fund to provide support to electoral processes through United Nations entities, for example through public outreach and education campaigns.

27. The trust funds administered by the Under-Secretary-General for Political Affairs, along with the UNDP Global Programme for Electoral Cycle Support, remain important sources of extrabudgetary funding for electoral assistance activities. Such funds allow the implementation of rapid response and innovative or catalytic projects and programmes, including those aimed at the prevention of conflict and at supporting the participation of women and underrepresented groups in political processes. Extrabudgetary funds were used during the reporting period to rapidly establish activities, inter alia, in Algeria, Côte D'Ivoire, Egypt, Guinea, Maldives, Mali, Somalia and Yemen.

V. Elections and violence

28. I have previously underlined the political nature of elections and made a distinction between the technical shortcomings of an election — which may serve as triggers — and deep-rooted social, economic and political grievances, which are the true causes of violence.[3] In its resolution 66/163, the General Assembly recommended that, at the request of Member States, the United Nations might, in addition to providing technical advice, also provide assistance in the form of mediation and good offices.

29. In 2012, the Department of Political Affairs and the United Nations System Staff College successfully launched a training programme entitled "A political approach to preventing and responding to electoral violence". The aim of the joint programme is to provide United Nations staff with an understanding of both the political and technical dimensions of elections in order to prevent violence and mitigate its effects. UNDP has also integrated the phenomenon of violence into its electoral work. In 2012, for example, it trained staff in all its country offices in Asia concerned with electoral projects on how to conduct assessments and identify options to reduce the risk of violence.

30. The United Nations can and should do more to understand the connections between elections and conflict and to develop tools to address them. I have asked the focal point to advise me further on the political, legal, technical and security elements that can increase or diminish confidence in an election. This should place the United Nations in a position from which it can advise national authorities, where appropriate, on ways to mitigate tensions and possible "zero-sum politics" before and after an election. This requires looking beyond the rules and conduct of an election itself and considering ways to realign the electoral stakes in the political system and culture of a country. For example, to avoid "winner take all" dynamics

[3] See A/66/314, paras. 35-47.

and to encourage peaceful transitions based on credible and acceptable election results, Member States could consider embedding into the political and legal order a structured and legitimate role for opposition groups, or lawful access to State resources.

31. The impact of armed groups on the credibility of elections in post-conflict situations also requires further study. While there should be incentives for armed groups to join a political process, their ability to use weapons to subvert the process or intimidate voters should be curtailed, they should renounce violence and a clear path to eventual disarmament should be developed. It will be important to identify effective practices in the relationship between, and the sequencing of, disarmament efforts and elections.

32. The following paragraphs describe three instances in which the United Nations applied a broader approach to elections and violence. These are examples only, chosen from among a number of other cases and by no means represent the entire spectrum of the work of the United Nations system on elections in these contexts.

33. The first case relates to Liberia. The period leading up to the presidential and parliamentary elections in Liberia in 2011 was tense. The opposition complained about an uneven playing field favouring the incumbent President and alleged that the National Elections Commission would rig the elections. While the run-off elections were held in a generally peaceful manner, they were marked by an opposition boycott, low voter turnout and violent clashes between police and unarmed opposition supporters on the eve of the polls.

34. The United Nations Mission in Liberia (UNMIL), in close consultation with the Economic Community of West African States (ECOWAS), engaged political actors in an effort to lessen tensions before, during and after the elections, in addition to providing technical and significant logistical support and mobilizing international financial assistance. Among other support, UNMIL provided good offices to the National Electoral Commission to establish an inter-party dialogue and to obtain consensus on the legal framework and improving perceptions of the impartiality of the Commission and UNDP provided technical assistance and advice to the Commission. UNMIL also assisted the Liberian authorities in developing their security plan and bolstered its posture to reinforce national police and other security services around the polling days to deter violence and prevent escalation. The mission also provided logistical support to approximately 150 ECOWAS electoral observers. UNMIL was temporarily reinforced during the electoral process by military and formed police units, as well as related supporting elements, from the United Nations Operation in Côte d'Ivoire (UNOCI), with additional UNOCI units and equipment on standby for rapid deployment to Liberia. Other United Nations entities have also worked towards peaceful elections in Liberia. In September 2012, the Security Council extended the mandate of UNMIL to support the post-electoral reform process in Liberia, including national reconciliation, constitutional reform and decentralization.

35. The second case concerns Yemen. On 23 November 2011, following months of upheaval and violence, political leaders in Yemen signed a transition agreement — the Gulf Cooperation Council Initiative and Implementation Mechanism — for a transfer of power from the President to the Vice-President and a two-year transition period. The agreement was the result of face-to-face negotiations facilitated by my Special Adviser on Yemen working closely with the members of the Gulf Cooperation Council, the

Security Council and other international partners. The agreement provided, as an initial phase of the transition, for the delegation of powers from the President to the Vice-President, the creation of a unity Government and for the conduct, with United Nations support, of presidential elections in February 2012 with a single consensus candidate (the then Vice-President). These initial steps are part of a longer-term political transition. A UNDP electoral support project was launched, building on assistance provided prior to the uprising of 2011 and including support from the Peacebuilding Fund.

36. In the pre-election period, Yemen continued to face numerous political and security challenges, including popular dissatisfaction with economic conditions, political disengagement and discontent, particularly among youth, as well as armed opposition to the central Government. Not all political actors had endorsed the political agreement. My Special Adviser, in cooperation with the United Nations Resident Coordinator and the United Nations country team, encouraged broad political engagement in the process and participation in the elections. The elections, on 21 February 2012, were held in a largely peaceful manner, with fewer security incidents than anticipated. At 60 per cent of registered voters, turnout was higher than anticipated. On 25 February 2012, the swearing in of President Hadi brought to completion the first phase of the political transition.

37. My Special Adviser, supported by mediation experts of the Department of Political Affairs, has continued to engage with all political sides in Yemen to move the political process forward. The successful holding of the elections in February 2012 created a conducive environment for the national dialogue conference, currently under way, and for the ensuing constitution-making process. The UNDP project, in the meantime, has continued to build the capacity of the national electoral authorities and support the development of a new list of voters to build confidence in future elections in Yemen.

38. The third case relates to Kenya. In anticipation of the elections in March 2013, the people and institutions of Kenya took notable steps to avoid a recurrence of the violence that erupted after the elections in 2007. Following the conclusion of a power-sharing agreement in 2008, a constitutional reform process was initiated to address underlying grievances. Among other changes, the new constitution, adopted by referendum in 2010, mitigated the zero-sum politics around the presidential election; changed the voting rules to require a broad geographic spread of support, in addition to a majority of votes, to win the presidency; devolved executive and legislative power to the counties; and restructured the parliament and other public institutions. The process also included judicial reforms and the creation of a new election commission.

39. In the run-up to the elections in March 2013, United Nations entities undertook broad and system-wide efforts to help prevent conflict. UNDP provided technical support to the Independent Electoral and Boundaries Commission; the Director-General of the United Nations Office in Nairobi, the United Nations Resident Coordinator and senior officials of the Department of Political Affairs engaged with political leaders throughout the process, working in liaison with Kofi Annan in his capacity as Chair of the African Union Panel of Eminent African Personalities on Kenya. UN-Women supported civil society efforts to promote and support women's political participation; UNESCO, in cooperation with others, held training workshops for journalists; and OHCHR monitored the human rights situation during the elections.

40. The elections saw their share of technical difficulties, as well as a few incidents of violence before polling day. Legal challenges were filed against the preliminary results, but the judicial rulings on these challenges and the final outcome of the elections were accepted by political leaders and the electorate in a peaceful environment. While improvements to the electoral process were a contributing factor, it was the long-term vision of Kenyans to address the root causes of the violence in 2007 and 2008 and their commitment to peace that led to this outcome. The smooth transition of power is a credit to the citizens and leaders of the country.

VI. Sustainability

41. I remain concerned about the potential for international assistance to lead to the introduction of technologies and systems that may be too costly for receiving countries to maintain in the long run. The General Assembly echoed the need to observe sustainability and cost-effectiveness in providing United Nations electoral assistance in its resolution 66/163. Elections carried out during the reporting period, both with and without United Nations assistance, continue to demonstrate that the relationship between the success of an election and the use of technology is not always straightforward. Investments in this regard need to be carefully considered. New technology may be best introduced as a solution to problems that might hinder the credibility of the process or the acceptance of results, not as an end in itself.

42. These important themes were discussed by members of electoral management bodies from around the world and international advisers at two global conferences organized during the reporting period by the Joint European Commission-UNDP Task Force on Electoral Assistance. The first, held in Kenya in 2012, focused on taking informed decisions about the possible introduction of technology in electoral processes. The second, in Mozambique in 2013, discussed sustainability in electoral administration more broadly, including the future of international electoral assistance. Participants agreed that comprehensive and consultative feasibility studies should be carried out before introducing new technological solutions into election processes.

43. While the financial aspects are critical, the notion of sustainability is broader and extends to political sustainability. The latter revolves around the question of whether national actors have sufficient confidence and trust in their electoral processes and in their political system as a whole. The United Nations approach to electoral assistance recognizes that credibility does not arise out of the polling process itself, or indeed one single event. The sources of political trust and acceptance lie deeper. Since elections are periodic events, their credibility, and that of the electoral administration, should be built and sustained over time, within a broader framework of sustainable democratic institutions and practices. We should nevertheless keep in mind that the ultimate objective is to empower each recipient country to carry out its own sovereign process.

VII. Observations

44. The United Nations has provided electoral assistance to Member States for several decades and it has been almost 25 years since the General Assembly began

its consideration of this agenda item. I am encouraged that the United Nations and others, including regional organizations, have developed an impressive body of principles and practices aimed at improving electoral administration worldwide. Much of the United Nations electoral assistance involves sharing these principles and practices. However, as the General Assembly has noted, there is no single model of democracy and elections are a sovereign matter.

45. It is important to recognize that conducting genuine elections requires more than improving technicalities or comparing processes against international obligations, commitments and practices. I wish to emphasize that elections are fundamentally political, rather than technical, events; and more importantly they are not an end in themselves. The purpose of an election, as articulated in article 21 of the Universal Declaration of Human Rights, is to ascertain the will of the people regarding their Government. In this respect, I reiterate that a genuine election is ultimately one in which the outcome reflects the freely expressed choice or choices of the people.

46. I am committed to ensuring that United Nations assistance ultimately helps national authorities to conduct elections that are a legitimate and sovereign expression of the people's will and enjoy credibility among national stakeholders. I encourage and support the efforts of Member States to comply with their international obligations and commitments as they apply to elections, including, as relevant, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women.

47. I wish to underscore that it is not enough that an electoral process produces an accurate outcome. Citizens must have trust that this outcome does indeed reflect their will. In many situations, building this trust from the beginning is the key priority and the focus of United Nations advice. Measures that tend to enhance trust and confidence include broad political consultation on the rules of the game, including the electoral system and electoral laws; the appointment of electoral authorities that are and are seen to be honest, impartial and capable; transparency in electoral administration; state neutrality; inclusiveness, especially of politically marginalized groups, including minorities; and efforts to enhance the political participation of women.

48. Electoral authorities must administer the process honestly, fairly and transparently and earn the trust of participants. However, the greatest responsibility for peaceful and credible elections often rests with political leaders and candidates. Their commitment to peaceful conduct and to playing by the rules will largely define the actions and attitudes of their supporters. Their magnanimity in victory or grace in defeat can move the country forward and define their own legacy. The readiness of those who win elections to listen to those who did not vote for them and to work with the political opposition can accelerate stability and deepen democracy.

49. In working to build confidence, especially where there is a risk of electoral violence, it is important to take a broader and longer-term perspective. Elections can be a trigger for discord or violence, but the causes are most often systemic and unresolved political grievances not directly related to the electoral process itself. I encourage all efforts to address key political inequities and institutional deficits. Building a shared understanding of how a country is to be governed after the

election, can often be more effective than increasingly intricate electoral safeguards against technical errors, inconsistencies or fraud.

50. United Nations electoral assistance, where it is requested and provided, should complement other United Nations system activities — to the extent that they are mandated or requested — in support of peaceful transitions, democratic governance, the rule of law, human rights and gender equality. Just as elections are not isolated technical events but are an integral part of domestic political processes, United Nations electoral support should be part of a broader approach to promoting peace and stability, as well as democratic governance. A good election alone is rarely sufficient to produce good governance; good governance on the other hand tends to produce good elections. I encourage Member States to pay attention to integrating these political, security and technical perspectives when adopting mandates for United Nations peace operations.

51. Supporting the national efforts of Member States in ensuring inclusive political processes and promoting women's political participation is one of my highest priorities. I am encouraged that in countries where the Security Council has mandated the United Nations to provide electoral assistance since 1989, women occupy, on average, 23.3 per cent of all seats in the lower house, or single house if there is only one. This is a higher share than the global average. At the same time, much more remains to be done, as women's participation in politics globally still falls far short of expectations. Through its electoral assistance, the Organization will continue to promote and advise on the implementation of the international commitments of Member States, including consideration of temporary special measures. The United Nations should also strengthen advocacy in countries that do not receive electoral assistance and in developed countries. The main framework for United Nations advocacy to accelerate women's political participation continues to be the Convention on the Elimination of All Forms of Discrimination against Women and the related general recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination against Women on article 4, paragraph 1 of the Convention.

52. I am encouraged by the increased international interest in elections and electoral assistance, which has led to more dialogue, better access to comparative data and more reflection on the nature and purpose of assistance. But this has also meant that the number of organizations active in the field has steadily grown. Where such organizations provide comparable services, competition for resources increases and coordination becomes more complex. Despite the worthwhile initiatives of committed organizations and talented experts, there is a risk of overcrowding. I again encourage Member States, when requesting assistance or when drafting United Nations electoral mandates, to consider entrusting the United Nations with a lead role in ensuring coherence and coordination among all electoral assistance providers.

53. My focal point for electoral assistance has made progress in ensuring coherence within the United Nations system through the adoption of electoral policies in close consultation with members of the Inter-Agency Coordination Mechanism for Electoral Assistance. However, coherence does not result from the issuance of policies alone. It also requires consistent implementation of those policies and exchange of information. Coordination, where it works well, can add value to our efforts. Where it does not, we face high transaction costs and a loss of

effectiveness in our support to Member States. I intend to strengthen this aspect of collaboration among United Nations entities and I count on their commitment to help implement this goal. I encourage Member States to support my efforts to ensure that all United Nations electoral activities take place within the framework set by the General Assembly.

54. The United Nations system has adopted the principle that all electoral assistance in peacekeeping, peacebuilding or special political mission settings should be delivered in a fully integrated manner from the outset, irrespective of whether the mission is structurally integrated. This is in keeping with the agenda of delivering as one United Nations and makes support to national institutions more effective and cost-efficient. I encourage Member States to endorse this principle and also support efforts to ensure greater coordination and coherence of United Nations electoral assistance in all non-mission settings from the outset.

55. Elections conducted over the past two years have again demonstrated that there is a complex relationship between the sophistication of the technology used in an election and the level of confidence in the electoral process. As the Supreme Court of Kenya recently noted in a ruling on election challenges, "it is apparent that electronic technology has not provided perfect solutions. ... Since [it] has not yet achieved a level of reliability, it cannot as yet be considered a permanent or irreversible foundation for the conduct of the electoral process." Of course, such a conclusion may not necessarily hold true for every Member State. That is why the decision to introduce new technology is best taken on a case-by-case basis in accordance with national needs and financial capacities, following a comprehensive and consultative feasibility study.

56. The demand for electoral assistance is an indication of the general appreciation of the work of the United Nations in supporting democratic development, including credible, periodic and genuine elections. However, as stressed in my previous report, investments in elections alone will not yield sustainable and comprehensive results. Peace and development require good, effective governance at all levels, including an independent and professional judiciary, full respect for human rights and gender equality, open and pluralistic media, a robust civil society and a credible and responsive Government. I believe that the deliberations on the development agenda beyond 2015 offer a good opportunity to discuss the linkages between development, peace, human rights, good governance and elections.

Annex I

Selected examples of United Nations electoral assistance during the reporting period

Côte d'Ivoire

1. The first legislative elections in Côte d'Ivoire since 2000 were conducted on 11 December 2011. They were characterized by a relatively low voter turnout and some violent incidents. Following complaints of campaign violations, the Constitutional Council annulled the results in 11 constituencies. Repeat elections were held for these districts — as well as one district where a candidate had died — in February 2012. The repeat polling took place in a generally peaceful atmosphere, except in two districts. In one of these districts, UNOCI peacekeepers escorting the transport of results sheets were attacked.

2. Following the elections in December 2011 and the repeat elections in February 2012 and February 2013, the Special Representative of the Secretary-General in Côte d'Ivoire certified on 20 February 2013 that all stages of the legislative elections had provided the necessary guarantees for open, free, fair and transparent elections. This signalled the end of the certification mandate of the Special Representative, in line with existing peace accords and Security Council resolution 1765 (2007). UNOCI, UNDP and UNOPS provided technical, advisory, logistics and security support, including in distributing materials.

3. Local elections were held on 21 April 2013 for the 197 municipal and 31 regional authorities. Despite minor incidents in a dozen constituencies, the Independent Electoral Commission announced the results of 194 constituencies by 29 April 2013. Following the local elections of 21 April 2013, the Supreme Court nullified results in two municipalities and in one region, based on complaints. Results were also revised in four municipalities, but without an impact on the results. On 19 June 2013, in consultation with the Commission, the Government decided to hold repeat elections in the three constituencies concerned, where results were cancelled, and in one municipality where the vote did not take place due to tensions during the vote. Security Council resolution 2062 (2012) gave ONUCI a reduced electoral assistance mandate vis-à-vis local elections, commensurate with the country consolidating stability and rebuilding national capacities. The electoral assistance provided by UNOCI in an integrated manner with UNDP and UNOPS, focused on technical advice to the Electoral Commission and contributing to the security of local elections.

Democratic Republic of the Congo

4. The presidential and legislative elections were held on 28 November 2011 amidst daunting logistical challenges. Member States and the United Nations expressed concerns about the irregularities reported by several observer missions and called for a thorough and open review of the elections. These included reports of electoral irregularities, violence against electoral workers, arbitrary arrests and destruction of property and election materials.

5. The United Nations provided technical and logistical support through an integrated international technical assistance team comprising the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

(MONUSCO), UNDP and UNOPS. The integrated assistance team focused on capacity- and institution-building of the Independent National Electoral Commission. It supported operational planning, gender mainstreaming, training, voter education, procurement, deployment of personnel and electoral materials and information technology, such as setting up a website and updating the voter database. UNDP also worked to strengthen outreach to voters and the capacity of female candidates and continued its advocacy for mainstreaming gender into the electoral process. UN-Women helped develop training materials on gender mainstreaming in electoral processes; MONUSCO and UNOPS supported the deployment of national and international observers; and UNESCO trained journalists in Matadi and Bukavu on election reporting. UNDP suspended its electoral support activities in April 2013 on the recommendation of its donor partners, due to delays in implementing electoral reforms, while continuing its outreach activities on electoral and democratization questions. The promulgation of the revised organic law on the Independent National Electoral Commission on 19 April 2013 and the establishment of the Commission in June 2013, represent critical steps towards reviving the electoral process and possible re-engagement with the Commission for the preparation and organization of provincial and local elections.

Honduras

6. UNDP provided technical assistance to the institutional development of the Supreme Electoral Tribunal in the preparations for the general election on 24 November 2013. Support was provided in establishing and strengthening gender and training sections within the Tribunal and in reorganizing sections relating to census, mapping and communications. UNDP supported capacity development through the BRIDGE initiative in cooperation with UN-Women. It also coordinated the use of funds from several donors and promoted South-South cooperation with other electoral institutions, such as the Federal Electoral Institute of Mexico and the Electoral Tribunal of Panama.

Iraq

7. Elections to the governorate councils were held on 20 April 2013 (12 governorates) and 20 June 2013 (2 governorates). Preparations were under the full responsibility of the Iraqi authorities, the High Electoral Security Committee and the Independent High Electoral Commission. Tight security arrangements were put in place and while several serious violent incidents occurred in some parts of the country, overall the atmosphere was calm and the democratic spirit of the Iraqi people prevailed. Candidates and voters nevertheless faced a challenging security environment prior to the elections, which limited the extent of campaigning and public assembly. Three appeals against the provisional results were upheld by the independent Electoral Judicial Panel, leading to changes in three winning candidates. On 1 June 2013, the Independent High Electoral Commission certified the final results of the polling held on 20 April for the 12 governorates. More than 26 of all winners country-wide were women. Moreover, at least 25 per cent of the members of each of the 12 governorate councils are women.

8. During the reporting period, the United Nations Assistance Mission for Iraq (UNAMI), together with its partner organizations, UNDP and UNOPS, as well as UNESCO until 2012, continued to provide technical advice and to build up the

capacity of the Independent High Electoral Commission in an integrated manner. This included advice to the national authorities on the selection process for the new Board of Election Commissioners, appointed in September 2012. The capacity of the Commission to deliver credible elections has continued to grow over the years with United Nations support.

Libya

9. An integrated United Nations team, led by the United Nations Support Mission in Libya (UNSMIL) and also comprising UNDP and UNOPS, assisted the Libyan authorities in organizing and conducting elections to the General National Congress on 7 July 2012. These were the country's first free elections in 47 years, with a 62 per cent turnout of voters. The legal framework included temporary special measures for women, who won just over 16 per cent of the seats. The United Nations team provided technical assistance and advice and took the lead in coordinating other international electoral assistance providers. UNSMIL provided options and expert advice to the National Transitional Council on the legal framework, including for the establishment of the High National Election Commission and the conduct of elections to the General National Congress. Through UNDP, the United Nations ensured the management of donor funds and supported the Commission in the procurement of election materials. The United Nations strengthened the institutional capacity of the Commission and promoted an inclusive electoral process, with an emphasis on the participation of civil society groups, women and minorities.

Timor-Leste

10. The Technical Secretariat for Electoral Administration of the Government of Timor-Leste effectively organized two rounds of the presidential election in March and April 2012 and the parliamentary election in July 2012, with the National Electoral Commission supervising the electoral process. The elections were characterized by high voter participation of 73-78 per cent, a calm security environment and acceptance of results by all candidates, political parties and the general population. Quotas established in the electoral legislation resulted in women assuming 38 per cent of the seats in parliament (25 out of 65 seats), the highest in the Asia-Pacific region.

11. An integrated United Nations team, consisting of the United Nations Integrated Mission in Timor-Leste (UNMIT) and UNDP, in collaboration with other United Nations agencies, including UN-Women and the United Nations Children's Fund (UNICEF), provided technical assistance and advisory support to Timor-Leste for the presidential and legislative elections. United Nations support to the Timorese election authorities focused on technical and advisory support in management, administration, legal matters, information technology and voter registration, operations and logistic planning, voter and civic education and outreach initiatives. With United Nations support, the electoral management bodies also produced outreach campaigns and materials aimed at enhancing the participation of marginalized and vulnerable groups, such as youth and first-time voters, women and elderly and disabled persons. UNMIT also facilitated democratic governance forums throughout the country on peaceful elections and provided limited air transport for electoral officials and materials to inaccessible areas on election days. The national

police effectively provided the necessary security throughout the electoral process, with the UNMIT police playing a support role.

Tunisia

12. Tunisia held elections to its National Constituent Assembly in October 2011, which were widely recognized as a success, with 51 per cent of eligible voters casting their ballots. Women secured 58 seats, representing 27 per cent of the 217 delegates. Despite some operational challenges, the Independent High Authority for the Elections conducted the process professionally. A UNDP project provided technical assistance to the national authorities and supported civil society organizations for public outreach activities and women candidates and UNESCO trained journalists and editors-in-chief on election reporting. Since the elections, UNDP has continued to support the institutions responsible for the electoral process, in particular the National Constituent Assembly in designing a new legal framework for elections and the new electoral management body. Support to civil society and women's political participation has also continued.

Annex II

Countries and territories receiving United Nations electoral assistance during the reporting period

Afghanistan*

Algeria

Argentina

Bangladesh

Belize

Benin

Bhutan

Bolivia, Plurinational State of

Burkina Faso

Burundi*

Cambodia

Cameroon

Côte d'Ivoire*

Democratic Republic of the Congo*

Djibouti

Egypt

El Salvador

Georgia

Ghana

Guinea

Guinea-Bissau*

Haiti*

Honduras

Iraq*

Jordan

Kenya

Kyrgyzstan

Lebanon

Lesotho

* Assistance provided under a Security Council mandate.

Liberia*

Libya*

Madagascar

Malawi

Maldives

Mali*

Mauritania

Mexico

Mongolia

Mozambique

Nepal

Nigeria

Pakistan

Panama

Republic of Moldova

Romania

Rwanda

Senegal

Sierra Leone

Solomon Islands

South Sudan*

Thailand

Timor-Leste*

Tunisia

Turkmenistan

United Republic of Tanzania

Yemen

Zambia

Zimbabwe

State of Palestine

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Sixty-eighth session
Item 115 (a) of the provisional agenda*
Elections to fill vacancies in subsidiary organs and other elections

Election of seven members of the Committee for Programme and Coordination

Note by the Secretary-General

1. In accordance with Economic and Social Council resolution 2008 (LX) and General Assembly decision 42/450, the members of the Committee for Programme and Coordination are nominated by the Council and elected by the Assembly.

2. The membership of the Committee in 2013 is as follows (the term of office expires on 31 December in the year indicated):[1] Algeria (2013); Antigua and Barbuda (2013); Argentina (2014); Belarus (2014); Benin (2013); Botswana (2015); Brazil (2014); Bulgaria (2014); Cameroon (2014); China (2013); Cuba (2014); El Salvador (2015); Eritrea (2013); France (2015); Guinea (2014); Guinea-Bissau (2014); Iran (Islamic Republic of) (2014); Italy (2014); Japan (2013); Kazakhstan (2014); Malaysia (2014); Pakistan (2014); Peru (2015); Republic of Korea (2013); Republic of Moldova (2014); Russian Federation (2015); United Kingdom of Great Britain and Northern Ireland (2014); United Republic of Tanzania (2015); United States of America (2014); Uruguay (2014); and Zimbabwe (2014).

3. The General Assembly, at its sixty-eighth session, will be called upon to elect seven members, on the nomination of the Economic and Social Council, to fill the vacancies in the Committee that will occur on 31 December 2013 upon the expiration of the terms of office of the following members: Algeria, Antigua and Barbuda, Benin, China, Eritrea, Japan and Republic of Korea.

4. In accordance with General Assembly decision 42/450, the vacancies are to be filled as follows:

(a) Three members from African States;

* A/68/150.

[1] There are three vacancies for Western European and other States, for two members whose term of office would begin on the date of election and expire on 31 December 2014 and for one member whose term expires on 31 December 2015.

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(b) Three members from Asia-Pacific States;

(c) One member from Latin American and Caribbean States.

5. By its decision 2013/201 B, the Economic and Social Council nominated the following five Member States for election by the General Assembly at its sixty-eighth session for a three-year term beginning on 1 January 2014: Benin, China, Ethiopia, Haiti and Japan.

6. The geographical distribution of the nominated Member States is as follows:

(a) African States (three vacancies): Benin and Ethiopia;[2]

(b) Asia-Pacific States (three vacancies): China and Japan;[2]

(c) Latin American and Caribbean States (one vacancy): Haiti.

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[2] The Economic and Social Council postponed the nomination of one member from African States and one member from Asia-Pacific States for election by the General Assembly for a three-year term beginning on 1 January 2014 (decision 2013/201 B).